

EXHIBIT A

FILED UNDER SEAL

Exhibit B

Transcript of the Testimony of

Nicole Bolton

Date: May 22, 2019

Case: Central Freight Lines, Inc. v. Amazon Fulfillment
Services, et al

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

Fax: (501) 378-0077

[<www.bushmanreporting.com>](http://www.bushmanreporting.com)

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CENTRAL FREIGHT LINES, INC. a
Texas Corporation

Plaintiff,

VS.

CASE NO. 2:17-CV-00814-JLR

AMAZON FULFILLMENT SERVICES, a
Delaware corporation, and DOES 1 through
25, inclusive,

Defendant.

ORAL DEPOSITION OF NICOLE BOLTON

May 22, 2019

BUSHMAN COURT REPORTING
620 West Third, Suite 302
Little Rock, Arkansas 72201
501.372.5115

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

MARC H. KALLISH, ESQ.
Roetzel & Andress
30 N. LaSalle Street
Suite 2800
Chicago, Illinois 60602

ON BEHALF OF THE DEFENDANT:

STEVEN W. BLOCK, ESQ.
Foster Pepper PLLC
111 Third Avenue
Suite 3000
Seattle, Washington 98101

I N D E X

EXAMINATION

By Mr. Kallish 5

E X H I B I T S

Exhibit No. 1 (Expert Opinion Report) 80
Exhibit No. 2 (Addendum to Expert Report) 189
Exhibit No. 3 (Bills of Lading) 185
Exhibit No. 4 (Examples) 198

1 ANSWERS AND DEPOSITION OF NICOLE BOLTON, a
2 witness produced at the request of the Plaintiff, was
3 taken in the above-styled and numbered cause on the
4 22nd day of May, 2019, before Janess Ferguson Smith,
5 Certified Court Reporter and Notary Public in and for
6 Saline County, Arkansas, at the Hilton Garden Inn
7 conference room, 322 Rock Street, Little Rock,
8 Arkansas, at 10:57 a.m.

9 * * * * *

1 NICOLE BOLTON,
2 the witness hereinbefore named, having first been
3 duly cautioned and sworn or affirmed to tell the
4 truth, the whole truth and nothing but the truth,
5 testified as follows:

6 EXAMINATION

7 BY MR. KALLISH:

8 Q. I'm an attorney that represents Central Freight
9 Lines in the lawsuit brought by Central Freight Lines
10 against Amazon Fulfillment Center Services or Amazon.

11 Today I'm going to refer to Amazon or
12 Amazon Fulfillment Center and Amazon as the same
13 company, so I will talk about Amazon to the extent
14 that we talk about Amazon or Amazon Fulfillment
15 Center Services; is that okay? Do you understand
16 that?

17 A. Yes.

18 Q. Okay. So it's my understanding that you are
19 here today as a retained expert by Amazon to give
20 expert opinions regarding the rate dispute between
21 Central Freight Lines and Amazon; is that correct?

22 A. Yes.

23 Q. Okay. Have you ever given a deposition before?

24 A. I have not.

25 Q. Okay. Then let me go over some of the rules

1 for giving a deposition. Obviously, you were sworn
2 under oath, so all of your answers are under oath
3 pursuant to the court guidelines.

4 You can see there is a court reporter
5 taking down everything that everyone says in this
6 room. Therefore, it is important that all of your
7 answers be out loud and verbal, "Yes," "No," further
8 explanation as is needed.

9 It's hard for the court reporter to take
10 down "Uh-huh" or "Huh-uh," or if you shrug your
11 shoulders or nod your head, it could be
12 misinterpreted. So if you could answer verbally,
13 that would be helpful.

14 Also, only one person can talk at a time,
15 so if you could wait until I finish my entire
16 question before you answer, that would be helpful, so
17 that the court reporter can get a clear question and
18 then an answer.

19 If people talk over each other, she will
20 probably miss some stuff, or it will be difficult to
21 get a clear record. Is that understood?

22 A. Yes.

23 Q. Finally, if I ask you a question that you don't
24 understand, or that is unclear, or is vague, I would
25 ask that you ask me to rephrase it or provide you

1 with additional information. If you answer the
2 question, I'm going to assume that you understand my
3 question.

4 A. Yes, sir.

5 Q. Okay. All right. And you were retained by
6 Amazon in this matter?

7 A. That's correct.

8 Q. When were you retained by Amazon?

9 A. In the beginning of April of this year.

10 Q. April of 2019?

11 A. Uh-huh.

12 Q. And who retained you?

13 A. Mr. Block.

14 Q. And how did Mr. Block come in contact with you?

15 A. Through a conference for Transportation
16 Logistics Counsel.

17 Q. And what conference was that at?

18 A. I'm sorry?

19 Q. You were at a conference with him, and that's
20 how he met you and got in contact with you?

21 A. That is correct.

22 Q. What was the conference?

23 A. It was about transportation logistics and the
24 law. It's their annual conference. Is that the
25 question you're asking?

1 Q. Yeah. Where was it at? Was it --

2 A. Oh, Memphis, Tennessee.

3 Q. And who was putting that on?

4 A. Transportation Logistics' counsel.

5 Q. And that was the first time that Mr. Block had
6 mentioned to you that he had an opportunity for you
7 to act as an expert witness in this particular case?

8 A. That is correct.

9 Q. Was that the first time you met Mr. Block?

10 A. We -- yes, that is the first time we actually
11 formally met. We may have been at the conference in
12 the previous years but was never introduced or
13 interacted.

14 Q. Have you ever acted as an expert witness in any
15 litigation before?

16 A. I have not.

17 Q. Have you ever acted as an expert witness in any
18 capacity? Not in litigation. Have you ever been an
19 expert witness in any capacity?

20 A. No, sir.

21 Q. How are you being compensated for your work in
22 this matter?

23 A. Two hundred dollars per hour.

24 Q. And do you know how many hours you have worked
25 so far in this case?

1 A. Me, personally, or as a collective whole?

2 Q. Are there other people working on this matter
3 other than you?

4 A. I have a tech person.

5 Q. Okay, yeah, collectively?

6 A. Collectively about 200 hours total.

7 Q. And who is the tech?

8 A. James Sacrey.

9 Q. Can you spell his name?

10 A. J-a-m-e-s, S-a-c-r-e-y.

11 Q. And does he work with you at your current
12 employer?

13 A. He does.

14 Q. Okay. And what is his role in terms of the
15 consulting that you're providing for Mr. Block?

16 A. He was the one that worked with CFL's IT to
17 make the spot quote application work.

18 Q. Other than providing technical support for the
19 spot quote system that was provided by Central
20 Freight, is Mr. Sacrey involved at all in any of the
21 analysis or compiling data or running data on your
22 behalf for this matter?

23 A. He pulled some codes behind the application, as
24 requested by me.

25 Q. And by "the application," you're talking about

1 the spot quote application?

2 A. That is correct.

3 Q. Anything else that he is involved, has
4 Mr. Sacrey been involved with in terms of your
5 consulting for Mr. Block?

6 A. No, sir.

7 Q. Okay. The rate, the industry rates that you
8 had run in this matter, did Mr. Sacrey do that, or
9 did you do that yourself?

10 A. I did that with the assistance of another truck
11 auditor that did some hand entry for me.

12 Q. Okay. Who is that other truck auditor?

13 A. Kelly, K-e-l-l-y, Kirkpatrick, K-i-r-k,
14 Patrick, P-a-t-r-i-c-k, hyphen, Lee.

15 Q. Okay. And so she helped you run the rates of
16 the various industry carriers that you used to
17 compare against the Central Freight spot quotes?

18 A. That is correct. I gave her the raters to use,
19 and using the data we hand entered rates.

20 Q. Okay. So just so I understand, when you say
21 "hand entered rates," so what do you mean by that,
22 "hand entered rates"?

23 A. So you have to use the other rating software
24 for these other carriers, and the rate that was
25 computed given the factors was then entered into the,

1 a new column, so hand entered into a new column for
2 comparison.

3 Q. So Kelly would take the data off of information
4 that was provided to you by Amazon that had factors
5 such as zip, and weight, et cetera, and then you
6 would hand enter that into the rating software
7 programs of the industry carriers, and then that
8 would spit out the price that they would have
9 charged; is that right?

10 A. It does produce a price, but just to be clear,
11 we were not interested in the price as much as the
12 rate.

13 Q. Okay. So at this point I am just trying to
14 figure out what everybody did. So Kelly was the
15 person that, you know, sat there and entered all of
16 the information so you could run the rate programs?

17 A. Not all of it. It was a combined effort, and I
18 also did a thorough check of what she had entered as
19 well.

20 Q. Okay. So she did some of it, and you did some
21 of it?

22 A. That is correct.

23 Q. Okay. Anybody else work on this project with
24 you, other than Kelly and James?

25 A. Summer Bartczak Zach, my CEO, S-u-m-m-e-r,

1 B-a-r-t-c-z-a-k. Again, she is our CEO. She just
2 offered some restructuring and editing help on my
3 report, but nothing regarding my opinions, just
4 basically the structure of it, as well as Genie
5 Crooms, G-e-n-i-e, C-r-o-o-m-s. She is our COO, and
6 she as well offered some editing.

7 Q. All of these edits that were done internally,
8 do you still have those edited reports?

9 A. I have several draft versions, that is correct.

10 Q. Okay. And you have those, so those are
11 available. If we ask you to produce them, you can
12 produce those to us?

13 A. Yes.

14 Q. You didn't produce those to us in the materials
15 we asked for in terms of your file; is that right?

16 A. That is correct.

17 Q. Why didn't you include that in your file?

18 A. It's my first time. I didn't realize that that
19 would be necessary, but I do have those saved and
20 will be willing to send them.

21 Q. Okay. All right. Then I would ask that you
22 turn those materials over to Mr. Block, and we will
23 make a formal request to Mr. Block that he produce
24 those draft reports?

25 A. Yes, sir.

1 Q. Thank you. Okay. So we talked about everybody
2 that was involved in creating your report and doing
3 your consulting for Mr. Block; is that right?

4 A. That's correct.

5 Q. Anybody else?

6 A. No, sir.

7 Q. Okay. And the total hours for all of those
8 people, including the CEO and the COO that edited
9 your reports, is that 200, approximately 200 hours?

10 A. That is the collective, yes.

11 Q. Okay. And what is the total amount that you
12 have billed Mr. Block so far for this project?

13 A. We have not estimated a bill at this point.

14 Q. And why is that?

15 A. Because we haven't completed everything --

16 Q. Okay.

17 A. -- in terms of the reports.

18 Q. Okay. When you say you haven't completed
19 everything in terms of the reports, do you anticipate
20 doing additional work on this matter for Mr. Block?

21 A. I do.

22 Q. Okay. And what specifically do you intend to
23 do in terms of additional work on this matter?

24 A. I plan to offer rebuttal to Mike Regin's
25 (phonetic), Michael Regin's expert witness report.

1 Q. Okay. Anything else? So you're going to offer
2 rebuttal to Michael Regin's report? Do you intend to
3 do any more work that's related specifically to the
4 opinions that you have set forth in this case?

5 Do you understand what I'm asking you? So
6 I'm just asking about your opinions. Are your, are
7 your opinions completed and done, all of the work
8 regarding the involvement of your opinions?

9 A. I can't honestly say yes at this point because
10 there could be more information provided along the
11 way that may require some more research, just
12 depending.

13 Q. What type of information would you anticipate?

14 A. Sorry, this is difficult to answer because I
15 have not done this before, and so I'm not a hundred
16 percent sure what to be expecting, but I believe that
17 Mr. Regin will be offering a rebuttal report, which
18 will require me to read that and compare to other
19 notes.

20 Q. Oh, so what I want to know is the report that
21 you provided to Mr. Block and then was, obviously,
22 forwarded on to me as counsel for Amazon, I just want
23 to make sure that -- I want to understand that you
24 feel that you did a complete job on that report. You
25 had everything you needed at the time you wrote the

1 report, and that the report is complete and done.

2 There's not things, like, Oh, I wish I
3 would have had this, and then I would have changed
4 the opinion.

5 That's what I'm asking you. The report
6 that you submitted is final and complete; is that
7 right?

8 A. The opinions in my report will not be changed,
9 if that's what you're asking me.

10 Q. Okay. Because you had everything that you
11 needed at the time you wrote your report to complete
12 your report; right?

13 A. As far as I'm aware.

14 Q. Okay. Great. I just want to get a little bit
15 of information about your background. What year did
16 you graduate high school?

17 A. 2003.

18 Q. Okay. And what is your highest level of
19 education? I know there is some information in here
20 in your C.V., or in your experience, but I just
21 wanted to clarify that. What is the highest level of
22 education?

23 A. I have some college. I'm about three classes
24 short of having a Bachelors of Arts of mathematics
25 with a minor in secondary education.

1 Q. Okay. And what school is that at?

2 A. University of Arkansas at Little Rock.

3 Q. And are you actively enrolled in that
4 university, or you stopped, and you're just short of
5 a, of a -- you were just short of obtaining your
6 degree?

7 A. I have stopped. I am not actively enrolled;
8 however, it is a part of my strategic plan with my
9 CEO that I will complete it within the next two
10 years.

11 Q. Okay. And other the partial degree from the
12 University of Arkansas, any other post high school
13 education?

14 A. I have taken classes through the Institute of
15 Logistical Management, specifically Transportation
16 Logistics and the Law, part one, as well as Motor
17 Carrier Operations.

18 Q. Okay. And how long are those -- are those
19 classroom programs, or what are those, when you say
20 that they are continuing legal education, can you
21 describe what they are?

22 Are they online classes? Are they
23 classrooms where you go for a series of weeks, or are
24 they, like, a one-day seminar?

25 A. Did you ask me continuing legal education?

1 Q. Well, you had mentioned, you had mentioned that
2 you're involved in some additional education outside
3 of the University of Arkansas; is that right?

4 A. That's correct.

5 Q. So maybe I moved too quickly. What were those
6 again? What were the --

7 A. Transportation Logistics and the Law, part one,
8 and Motor Carrier Operations.

9 Q. Okay. So I want to know where are these, are
10 these classes? Are they seminars? Are they online
11 courses? What are these two titles you just provided
12 to me?

13 A. They are online courses.

14 Q. And who puts them out, or who puts them online?

15 A. The Institute of Logistical Management.

16 Q. And where is that located?

17 A. I honestly don't remember where they are
18 physically located.

19 Q. Okay. So -- and how long are these online
20 courses? Are they, like, you sit for them one time
21 and complete the course, or is it weekly, or how does
22 that work?

23 A. It's a six month self-paced course.

24 Q. Okay. Is that the same for the motor carrier
25 operations?

1 A. That is correct.

2 Q. And when you say six month self-paced, can you
3 give me a little bit of idea of how that works?

4 A. We receive a binder with the book or a copy of
5 a book, depending on the materials for the course.
6 There were numerous quizzes to be done for the
7 reading sections that you had in which you submitted
8 to the, the instructors for grading.

9 I believe there were at least seven or
10 eight for each course, which could also include
11 conversations. There were a lot of questions and a
12 lot of learning, and then it was followed up at the
13 end with case studies, and then a final proctored
14 quiz.

15 Q. When you say a "final proctored quiz," is that
16 done online, or do you have to actually go somewhere
17 for that?

18 A. No, we have to have a proctor for that.

19 Q. Okay. So you go to a physical location and do
20 the test there?

21 A. That is correct.

22 Q. Okay. And did you pass both of the exams on
23 the first try?

24 A. With A's.

25 Q. Okay, good. The Transportation and the law,

1 can you tell me a little bit about what the content
2 of that course was?

3 A. It focused on a lot of the history of
4 regulation and deregulation in the motor carrier and
5 rail industry.

6 Q. Did it have anything to do with rating
7 shipments in the LTL area?

8 A. I honestly can't remember if that was a part of
9 that course.

10 Q. What about the motor carrier operations, what
11 was that about?

12 A. Everything from what you expected in a
13 terminal, how shipments would move. I believe it did
14 details about understanding somewhat of how carriers
15 would rate shipments.

16 Q. What specifically did it talk about how
17 carriers rate shipments?

18 A. I can't provide you the specifics.

19 Q. You don't recall?

20 A. Not at this time.

21 Q. Okay. The title of that seminar or online
22 course was Motor Carrier Operations. Did it focus on
23 any particular type of motor carrier, LTL, TL? You
24 know what I'm talking about when I say "LTL"; right?

25 A. Yes, sir.

1 Q. Less than total load; right?

2 A. Less than truck load.

3 Q. I'm sorry. Less than truck load?

4 A. Yes, sir.

5 Q. Yeah. And TL?

6 A. Truck load, yes, sir.

7 Q. Okay. And what is your definition of LTL?

8 A. LTL is moved on a 20 -- usually, okay. Sorry.
9 LTL is not a Point A to Point B shipment style. A
10 carrier has a city trailer that makes up, that makes
11 several pickups within a terminal area.

12 From there it is taken to the origin
13 terminal where it is sometimes inspected or not
14 inspected, but it's prepared for the long haul
15 portion of this move.

16 All of those shipments are placed on
17 trailers, moved together. Commonly, it's 228
18 split-type trailers, and these trailers are then
19 moved to the destination terminal where they are
20 removed. They may or may not be inspected.

21 Then they are placed again on city trailers
22 that move within a terminal area to make deliveries,
23 versus truck load where a shipment requires or uses
24 the entire trailer, whether it fills it or not
25 completely, it is the use of the trailer and usually

1 moved most from Point A directly to Point B, so
2 origins and destination unless there are stop-offs
3 involved in this particular shipment.

4 Q. Do you have any understanding of the finances
5 of an LTL shipment in terms of the capacity of the
6 truck?

7 A. I'm sorry. I don't understand your question.

8 Q. Do you understand how LTL carriers make money
9 based upon selling the capacities of their trucks?

10 A. Within a fine balance no, I don't know that
11 balance.

12 Q. Okay. So you don't have any understanding of
13 whether a shipper takes up more space in an LTL
14 truck, whether they are charged more money for that
15 type of a shipment versus a smaller shipment?

16 MR. BLOCK: Object to form.

17 Q. That's something that you're not aware of?

18 A. I'm sorry?

19 MR. BLOCK: I said, "Object to form."

20 You might hear me object from time to time,
21 but you will still answer the question.

22 A. Okay. So I do understand about pricing of
23 shipments in the aspect of, basically, the more
24 trailer space I take, the more expensive it's going
25 to be.

1 I also understand that there are rules
2 implemented, such as capacity load and linear foot
3 charges, as well as cubic capacity and density
4 minimum charges that, basically, set a baseline
5 minimum of what a carrier would expect to bill or
6 accept for those shipments that are requiring more
7 space, if necessary or applicable.

8 Q. Do you understand the difference financially
9 between an LTL move and a truck load move, why
10 there's a difference financially between those two
11 movements?

12 MR. BLOCK: Object to form.

13 A. There are certain aspects that I do understand.
14 With a truck load carrier it is an entire trailer
15 dedicated to a single shipment, and it does not have
16 the stops in between, as far as terminals for loading
17 and reloading, while LTL carriers move multiple
18 shipments within their trailers.

19 Q. Okay. Where did you learn about the difference
20 between an LTL carrier and a truck load carrier?

21 A. Through my experience in my job.

22 Q. Okay. Have you ever worked for a carrier?

23 A. No, I have never specifically worked for a
24 carrier.

25 Q. And I assume you have never worked for an LTL

1 carrier; is that correct?

2 A. That is correct.

3 Q. Okay. Let's go back to your background a
4 little bit. So you graduated from high school in
5 2003; is that right?

6 A. That's correct.

7 Q. What did you do immediately after high school?

8 A. I started college courses and working.

9 Q. And those are the college courses at University
10 of Arkansas?

11 A. I also took some at Arkansas State University
12 at Beebe.

13 Q. Did you obtain a degree at that university?

14 A. No, sir.

15 Q. How long were you there?

16 A. I just took a few classes that transferred to
17 UALR, along my work at UALR.

18 Q. Okay. So you were at the first college and
19 then moved, and then transferred to University of
20 Arkansas?

21 A. I was at the University of Arkansas at Little
22 Rock, but there were some courses that I could take
23 at ASU Beebe that were transferable that worked
24 better with my working schedule and my commuting, and
25 so I took those courses and transferred them to UALR.

1 Q. Okay. So were you doing them simultaneously?

2 A. Yes.

3 Q. Okay. All right. And so how long were you
4 actually taking college courses for? What was the
5 time period?

6 A. From 2003 to 2008.

7 Q. Okay. And then in 2008 you discontinued your
8 education, but you are going to go back to that?

9 A. That's correct.

10 Q. Okay. You said you were working in 2003. What
11 were you doing in 2003?

12 A. I believe I was still at -- I'm trying to
13 remember.

14 Q. So it wasn't like -- it wasn't in the truck --
15 I'm trying to find out when you got in to, what you
16 did before you got into the trucking industry.

17 So if you were working, you know, at a fast
18 food restaurant, or odd jobs, or, you know, the type
19 of jobs that people at college work, I mean, I'm just
20 trying to find out when you got into the
21 transportation business, and what you did in the
22 transportation business.

23 A. In 2008 is when I started in the transportation
24 business.

25 Q. Okay. So from 2003 to 2008, you were basically

1 a college student that was also working, I suppose,
2 to support yourself, put yourself through college,
3 but it wasn't the transportation industry; is that
4 right?

5 A. That is correct.

6 Q. Okay. All right. So let's talk about 2008.

7 A. Okay.

8 Q. So in 2008, you left college, and you started
9 working in the transportation industry?

10 A. That's correct.

11 Q. And who did you work for?

12 A. American Truck and Rail Audits, Inc.

13 Q. American Truck and Rail Audits, Inc, okay. And
14 what was the position you were hired for there?

15 A. Originally, I started out as data entry for
16 three months.

17 Q. Uh-huh.

18 A. And then moved to an auditor training role.
19 And then six months after that, I was moved into the
20 truck audit manager role.

21 Q. Okay. So you received -- first, when you first
22 started working for your -- this is your current
23 employer; right?

24 A. That's correct.

25 Q. When you first started working for your current

1 employer, you were doing just data entry, and then
2 they moved you into an auditor training program, or
3 was it a role? I mean, was it a program where they
4 were training you on the job?

5 A. That's correct. You received a five-year
6 certificate after five years of training under the
7 CEO and other people on your truck team.

8 Q. Okay. So why did you say for a six-month
9 training? It seems like there was a five-year
10 training?

11 A. I did not say six-month training. I said I
12 moved to the management role after six months.

13 Q. Okay. So you --

14 A. Still within truck audit training. I had not
15 completed my certificate, but I did hold a leadership
16 title.

17 Q. Okay. Let me just get this straight. So from
18 2008, you said it was a five-year program to 2013.
19 You were in a training program at your current
20 employer; is that right?

21 A. That is correct.

22 Q. Okay. And then in 2013, you completed that
23 training program?

24 A. That's correct.

25 Q. Okay. And you said that you also had a

1 management role, so was it like a management training
2 program? Is that what you were -- was that like a
3 management training program?

4 So the idea was after you became certified,
5 then you would be in management in the company, or
6 were you simultaneously in management? Did you
7 supervise people, et cetera, during the five-year
8 period?

9 A. I did supervise people during that five-year
10 period.

11 Q. Okay. So explain to me exactly what you did
12 during the five-year period that you were in the
13 training program at your current employer.

14 A. I led our truck audits team between being the
15 liaison for our team to our CEO. I assisted in
16 account decisions with the CEO.

17 Q. What else?

18 A. There was a lot of administrative work, as far
19 as being the leader.

20 Q. Okay. When you say it was a five-year training
21 program, did you have -- in addition to on-the-job
22 training, did you have formal training? Like were
23 there manuals? Was there periodic testing, anything
24 like that?

25 A. Not necessarily a structured program. I did

1 attend other classes, such as LTL 101 through SMC
2 Cubed, as a learning opportunity.

3 Also, took, again, the two classes. The
4 transportation logistics and the law class was
5 required by our CEO as a part of our training.

6 Q. So the certification that you received after
7 five years, who provides the certification?

8 A. It's by our company.

9 Q. So that's a company certification?

10 A. That's correct.

11 Q. It's not by any kind of a transportation board
12 or any transportation organization?

13 A. There is not one, as far as my knowledge, that
14 exists to be able to do that. It's a very unique
15 business.

16 Q. Okay. So your company provided the five-year
17 certification program and the actual certification;
18 is that right?

19 A. Yes, sir.

20 Q. And what do they, what do they say, that you
21 were, you were a certified auditor?

22 A. Transportation cost auditor.

23 Q. Certified transportation cost auditor. Okay.

24 Let me just go back now. So I just want to be clear.

25 So other than the certification that you received

1 from your current employer, do you have any other
2 certifications in the transportation industry?

3 A. I do not.

4 Q. And during the five-year training program that
5 you were in where you became a certified auditor, did
6 you actually engage in audits of carrier billing
7 practices?

8 A. Yes.

9 Q. Okay. How many during that time period?

10 A. I cannot give you a number.

11 Q. Was it hundreds or thousands?

12 A. Thousands.

13 Q. Thousands of audits?

14 A. It depends on how you're defining audit. Are
15 you talking about a single freight bill as an audit?
16 Are you talking --

17 Q. No. I'm talking about -- what I'm talking
18 about is a company comes to you and says, I think
19 that my carrier is overcharging me, and, therefore, I
20 would like you to audit their bills.

21 And then I assume they download or upload a
22 lot of data, or give you hard copies of their bills,
23 and this is, you know, hundreds or thousands,
24 depending on the size of the company, and you review
25 that and come to some conclusions as to whether those

1 bills were properly rated. Is that what you consider
2 an audit?

3 A. That is correct.

4 Q. Okay. And so in that circumstance over the
5 five years that you were in the training program, how
6 many audits were you involved in?

7 A. So you're talking about a specific client that
8 -- I'm sorry. I'm not quite understanding of what,
9 what factors this number is coming from.

10 Q. Well, let me ask it more generally. Why don't
11 you tell me exactly what you were doing for that
12 five-year training period, in terms of auditing.

13 A. We have multiple clients that use multiple
14 different carriers and loads. Again, my focus is on
15 motor carriers.

16 I worked both pre-audit and post-audit,
17 auditing for these clients across all of their
18 carriers, and audits are ongoing. It's not just a,
19 Here's all of my data. Do my audit. It continues
20 over time.

21 So we receive data on a routine basis,
22 depending on how they would like it set up. And so I
23 established relationships with clients and carriers
24 as I performed audits.

25 Q. Okay. Let's back up a little bit. So can you

1 give the names of some of the carriers or clients
2 that you do work for?

3 MR. BLOCK: Does the company hold that
4 confidential?

5 THE WITNESS: We do as far as clients.
6 I'm not allowed to name those.

7 BY MR. KALLISH:

8 Q. So you can't tell me any companies who you have
9 done an audit for while you have been employed by
10 your current employer; you can't give me that
11 information?

12 A. I can tell you one, as they are a reference on
13 my curriculum vitae, and they agreed to that, but
14 beyond that we have confidentiality clauses with our
15 clients.

16 Q. Okay. What is the one that you can tell me?

17 A. Helena Agri Enterprises.

18 Q. Okay. What is it, Helena?

19 A. Helena, H-e-l-e-n-a, Agri, dash, Enterprises.

20 Q. What kind of company is that?

21 A. They do ag chemicals, seed, fertilizer.

22 Q. What kind of shipping do they utilize?

23 A. LTL and truck load, and some brokerage, a
24 tanker.

25 Q. How much shipping do they do per year?

1 A. That, I couldn't tell you.

2 Q. And so you have done audits for Helena Agri
3 company?

4 A. I have done audits as well as contract
5 negotiations for this specific client.

6 Q. Okay. Tell me about the audits that you have
7 done for this client. What do these consist of?

8 A. As in the process we use or?

9 Q. Yeah. Tell me -- well, tell me, first, the
10 process that you use, and then tell me what your role
11 was in that process.

12 A. So for this specific client, they code their
13 invoices with their accounting code. They mail them
14 to our company.

15 We previously hand entered those. Now, we
16 are using OCR technology for data entry on those.
17 Then those bills are handed to auditors.

18 For many years I was the sole auditor for
19 that account. I went through each individual invoice
20 and rated it according to its contractual agreement.

21 If it was correct, I would approve the bill
22 for payment for the carrier, and if it was incorrect,
23 if there were overcharges, I would make corrections
24 and instruct the client on the correct amount in
25 which to pay, and then a file was sent routinely to

1 Helena Agri Enterprises to pay their freight bills to
2 the carriers.

3 Q. So you would actually read the contract between
4 Helena Agri and the carrier --

5 A. That is correct.

6 Q. -- and determine what the pricing mechanism was
7 agreed upon?

8 A. Correct.

9 Q. And then you would actually sit and look at
10 each invoice that the carrier shipped product for
11 Helena Agri and determine whether they properly rated
12 that shipment; is that right?

13 A. That is correct.

14 Q. And when you would do that, would you look at
15 the entire set of invoices, or would you do a subset,
16 and then -- would you look at the whole amount of
17 invoices between the parties, or would you create a
18 subset?

19 A. They were put into what we called batches for
20 processing just to move the processing smoothly.
21 Invoices come in on a daily basis and have to be
22 processed in a specific way. So saying to look at
23 all of them at the same time, I'm not, I'm not sure
24 what you're asking.

25 Q. So this is where I am going, as the carrier

1 issued invoices, you were looking at them in real
2 time? The invoices were issued. They were sent over
3 to you to look at them. You saw if there was an
4 overcharge, and then you authorized payment?

5 A. That is correct.

6 Q. Okay. So these weren't invoices that were
7 already paid. These were invoices to be paid?

8 A. That is correct. This is specifically a
9 pre-audit account, is the only one that we still
10 continue with. Our focus is mainly post-audit.

11 Q. Okay. But you can't tell me about any of the
12 clients that you do post-audits on; right?

13 A. That's correct.

14 Q. So that is a pre-audit client, but you have
15 multiple other post-audit clients?

16 A. That's correct.

17 Q. Okay. And so as a pre-audit client, but you
18 have multiple other post-audit clients?

19 A. That is correct.

20 Q. Okay. And so when you do post audit, how do
21 you do that?

22 A. When we receive the data or the bills that are
23 to be reviewed, we have or will collect pricing, the
24 contracts with pricing tariffs.

25 We have access to carrier tariffs online,

1 as those are made public. We will obtain the rating
2 software that is needed to rate the invoices.

3 We will obtain bills of lading and any
4 other supplemental documents that we need, as in
5 delivery receipts, inspection reports, weight
6 certificates, letters of authorization for
7 reconsignment, if there are ever any emails that were
8 about the shipment, any of this information, and it
9 could span to many different things, as you can
10 imagine.

11 Collectively pulling all of that together,
12 we review everything on the freight bill, everything
13 from the freight charges to class, the discounts, the
14 accessorials, anything that needs to be checked, as
15 it should be derived from the bill of lading
16 information, and not backwards, not freight bill to
17 bill of lading.

18 Once we check all of that, if it is good,
19 then we move on, and then we continue our audit
20 through the bills that we have. And if there is an
21 overcharge claim, then we will file a claim on behalf
22 of the shipper with the carrier.

23 Q. Okay. Can we just go back? Can you give me a
24 list of all of the documents that you look at in a
25 post-audit situation? You mentioned a bunch of them.

1 A. I did. So the bill of lading.

2 Q. Okay. What else?

3 A. Delivery receipt.

4 Q. Okay.

5 A. Inspection certificate.

6 Q. Okay.

7 A. Weight certificate. Letter of authority for
8 reconsignment.

9 Q. Okay. What else?

10 A. There could be emails.

11 Q. What else?

12 A. There could be inspection photos.

13 Q. What else?

14 A. Again, carrier rules, tariffs, any pricing
15 tariffs or contracts.

16 Q. Okay. Anything else?

17 A. These are the ones that we deal with, for the
18 most part. There could be other documents available.
19 I can't specifically think of any at this moment, but
20 could be.

21 Q. Okay. And then in a post-audit, after you
22 review all of those documents, then what do you do?

23 A. As I said, we audit the freight bills as per
24 all of this and what is applicable, if it's good.
25 Then we move on.

1 If it is billed incorrectly, and there are
2 overcharges to be claimed, we file that on behalf of
3 our client.

4 Q. How do you determine if it's billed correctly?

5 A. If it is in alignment with the pricing and the
6 bill of lading and any other documents that are
7 applicable to the shipment.

8 Q. Do you actually physically re-rate the shipment
9 based upon the information that is provided on all of
10 the collection of documents that you just told me?

11 A. Yes.

12 Q. So you look at all of the collection of all of
13 the documents, the delivery receipt, and the weight
14 information, and the bill of lading, and all of that,
15 and then you actually re-rate the shipment and
16 compare that to what the carrier billed?

17 A. That is correct.

18 Q. Is that how you do an audit?

19 A. Yes, sir.

20 Q. Is that how you do all of your audits?

21 A. Yes, sir.

22 Q. Okay. So that's the standard, standard way at
23 your current employer that you perform a post audit;
24 is that right?

25 A. That is correct.

1 Q. Okay. What you did in this case, was that a
2 post-audit?

3 A. I was not asked to perform a post-audit, so I
4 did not perform one.

5 Q. So you didn't audit the Central Freight
6 invoices and billing information the same way that
7 you normally do a post-audit; is that right?

8 A. I would not be able to necessarily do that.
9 There were charges provided from, in the data as to
10 what was billed, and so that was, that data was
11 available, as well as we ran the CzarLite rate. The
12 Czar 2011 rate, as per the contract. We did not do a
13 post-audit necessarily.

14 Q. Okay.

15 A. That's not what was asked of us. It was a
16 comparison between what was billed versus an industry
17 rate.

18 Q. Okay. So I just want to be clear that when you
19 normally audit carriers for the client that you work
20 for, you perform a post audit in the manner in which
21 you just described to me, but what you did for
22 Central Freight was not a post audit; is that right?

23 A. This is a full post-audit process. Now, there
24 can be a comparison to determine overcharges if I
25 know what should have been billed and what was

1 billed.

2 Q. No, I'm asking you a very simple question.

3 A. I'm --

4 Q. You described to me what is a post-audit that
5 you perform at your place of business?

6 A. That's correct.

7 Q. On a normal basis; correct?

8 A. That's correct.

9 Q. All right. So I just want to be sure what you
10 performed for Central Freight was not a post-audit.

11 A. That's correct.

12 Q. It was something else?

13 A. It was an analysis of rates.

14 Q. Okay. How many -- how frequently do you do
15 exactly what you did to analyze the Central Freight
16 billing? Have you done that in your career at your
17 current job?

18 A. I have never been asked to do that. It is
19 similar to what we do as, again, we are comparing
20 rates.

21 Q. Okay. So I want to be clear about a couple of
22 things. So the process that you engaged with Central
23 Freight to analyze their billing is a process that
24 you had never done before in your years at your
25 current employer and in your transportation

1 experience; is that right?

2 A. It is not this exact process, no. It was not a
3 post-audit, and that was not what I was asked to
4 perform.

5 Q. Okay. What were you asked to do?

6 A. To make a comparison to what industry rates,
7 expectations would be. I was asked to analyze the
8 spot quote application, and I was asked about some
9 practices within the motor carrier industry.

10 Q. Okay. So doing the comparison to industry
11 rates, you have never done that before in your
12 experience. This is the first time you have engaged
13 in that procedure; is that right?

14 A. Yes, sir.

15 Q. Okay. How did you come up with the methodology
16 in order to do the comparison to industry rates that
17 you used?

18 A. So we used the JOC, dot, com, top 25 LTL
19 carrier list. We chose carriers within that top
20 rating list as industry leaders.

21 We chose at least two carriers specifically
22 that operate in a very similar market area as Central
23 Freight as well, to make sure that we give notice to
24 that market area.

25 And as a collective, instead of using one

1 as a standard, we used a collection of LTL industry
2 leader carrier rates using their rating software,
3 with the same information, the information as
4 provided in the data for the shipments and compared
5 the weight rates, not necessarily the dollar amounts,
6 because the issue becomes being net neutral.

7 We are working in net charges and not gross
8 charges. So because we are working in net charges,
9 we had to do a simple calculation on top of that.

10 Once we determined the average carat weight
11 for what we would call an industry standard among
12 industry leaders, we multiplied that out to determine
13 a net value, because the spot quote amount used was a
14 net charge, not a gross charge, there could be a net
15 charge determined using CzarLite 2011 rates, compared
16 to an industry net charge.

17 Q. Okay. I want to back up a little bit. So I'm
18 not asking you how you, what specifically you did
19 yet. I want to know how did you develop the
20 methodology?

21 How did you determine that the way that you
22 analyzed the Central Freight billing information was
23 a proper way to analyze it? Who came up with the
24 methodology?

25 A. I did.

1 Q. You did?

2 A. Yes, sir.

3 Q. Okay. And is that methodology set forth in,
4 say, an audit manual or some type of industry
5 standard for auditing or anything of that nature?

6 A. There is no such thing that exists.

7 Q. Okay. So you just made it up; is that right?

8 A. I mean, the methodology, the step-by-step
9 approaches that I took, that's correct.

10 Q. Okay.

11 A. I did not make up rates.

12 Q. No. No, I'm not suggesting you made up rates.
13 I am saying you made up the methodology. You came up
14 with a way that you wanted to analyze the Central
15 Freight invoices; right?

16 A. It wasn't necessarily what I wanted to do. I
17 took industry leaders, which is the expectation of
18 the industry, and used them for comparison.

19 Q. Right. But what I'm trying to understand is
20 the process that you used. You already testified
21 that it was not a process that you had ever used
22 before in your experience in the audit, trucking
23 auditing business; is that right?

24 A. That's correct.

25 Q. Okay. So I'm trying to understand where you

1 came up with the formula or the methodology or the
2 manner in which to compare rates. Where did that
3 come from? Just you thought it through, and that's
4 the way you thought was a best way to do it?

5 A. If you are looking for an industry comparison
6 using industry leaders, as well as those in a similar
7 market, would logically lead you to a rate that would
8 be considered an industry average.

9 Q. Okay. Who told you that what was necessary in
10 this case was an industry comparison?

11 A. I was just asked if compared what the industry
12 rates comparatively would be.

13 Q. Okay. If you wanted to, you could have done
14 the full blown post-audit like you normally do with
15 your audit clients, right, to come up with whether
16 Central Freight's rates were proper or not?

17 A. I could be asked to do a post-audit, that is
18 correct. Within the timeframe that I had, you could
19 not complete a full post-audit.

20 Q. Right, but I'm saying that you could have done
21 what you do for most of your clients that you get
22 paid for in the normal course.

23 You could have reviewed all of the
24 documentation on the shipping, and you could have
25 rated each one of those shipments and compared it to

1 the Central Freight price; is that right?

2 A. I could.

3 Q. But you didn't do that?

4 A. No, sir.

5 Q. You chose to do this alternative methodology;
6 is that right?

7 A. That is correct.

8 Q. Okay. And, now, did your CEO and your COO, did
9 they help you develop this methodology, or was this
10 all on your own?

11 A. This is myself. My CEO does not have much of a
12 background in the industry. My COO, her background
13 is rail.

14 Q. Okay. So this is all you?

15 A. Yes, sir.

16 Q. Okay. Did Mr. Block help you develop this
17 industry standard?

18 A. No, sir.

19 Q. He didn't tell you what to do?

20 A. No, sir.

21 Q. No, okay. So let me just understand. So when
22 you were giving this project, what was your
23 understanding of what you were supposed to do?

24 A. Determine if this, these shipments were moved,
25 what would the industry expectation be, as far as

1 charges, and provide that information and, again, the
2 practices, a few practices within the industry, and
3 the, reviewing the software application.

4 Q. Okay. And just so -- and at no point you
5 didn't just, like, pull out a couple of random
6 shipments here and just re-rate them just for, just
7 to see if you re-rated them how they would come out.
8 You didn't do that; right?

9 A. I did. As far as using the Czar 2011 rater, I
10 did. I cannot with the volumes of spot quote rider,
11 because CFL has informed us that they don't have the
12 historical version used at that time.

13 Q. Okay. Going back to the CzarLite rating of the
14 shipments, did you ever look at an audit that was
15 prepared by Central Freight that ran all of the
16 shipments through the CzarLite and came up with a
17 total amount that would have been owed if they had
18 used the contract rates that were in the
19 Transportation Agreement, not the spot quote?

20 A. I'm sorry. That was a really long question.
21 Can you ask me again? I'm so sorry.

22 Q. It probably was not a good question. In your
23 report you came to the conclusion that the spot
24 quotes that were performed by Central Freight, or the
25 spot quotes that were submitted by Central Freight

1 were 98 percent higher than the CzarLite contractual
2 rates. Was that one of your findings?

3 A. I would have to review my report, as far as the
4 specific number, but I did find that they were
5 overbilled.

6 Q. Okay. In any event, you did a comparison of
7 the spot quote rates that Central Freight billed
8 versus the contractual CzarLite amount; is that
9 right?

10 A. There were two columns in the data that was
11 provided to me. One was the net charges for the
12 spot, the volume rate that was applied and billed,
13 the invoice amount I believe was what the problem
14 was, and then the net amount for the 2011 rate.

15 Q. Okay. Who calculated the net amount for the
16 2011 rates?

17 A. It was in the data provided to me.

18 Q. So Mr. Block provided you with a spreadsheet,
19 and one column had what he said were the, the
20 CzarLite rates for each shipment, and the other one
21 was, the other column was what he said were the spot
22 quote rates from Central Freight?

23 MR. BLOCK: Object to form.

24 A. I don't know that he said that. That was the
25 data that was provided to me.

1 Q. Okay. I'm just trying to understand where that
2 data came from. Is that from the tip system, the
3 Amazon tip system; do you know?

4 A. I believe it was titled with TIPS.

5 Q. Okay. So you didn't pull that data. That data
6 was provided to you by Amazon's lawyers; right?

7 A. That is correct.

8 Q. So you have no way to verify whether that data
9 was correct or incorrect; right?

10 A. I ran a 2011 raters and did check some of those
11 with the contract, the 2011 rater with the discount,
12 and checked some of those in that column.

13 Q. So you spot checked some of the information
14 that Mr. Block provided to you?

15 A. I'm not even sure that it came -- it did not
16 come from Mr. Block specifically. I don't know if --

17 Q. I'm trying to understand. I mean, obviously
18 you had to get some data to do your work here. Where
19 did that data come from?

20 A. It was provided, I believe, by Kelsey in a
21 box.com transfer.

22 Q. Okay. Who is Kelsey?

23 A. The paralegal. Correct?

24 MR. BLOCK: Yes.

25 A. Yes.

1 Q. At Mr. Block's office?

2 A. Yes, sir.

3 Q. So the data came from Mr. Block's office;
4 correct?

5 A. Correct.

6 Q. Okay. Again, in your folder where it contains
7 the information that you, you know, your file folder,
8 I didn't see any transmission from Mr. Block's office
9 to you with that data. Do you recall that being in
10 your folder?

11 A. I'm sorry. I must have misunderstood. I
12 provided all paper documents. If I need to provide
13 all emails, I can. Again, that was in a box.com.

14 Q. Yeah. So, you know, when we asked for your
15 full file, we anticipated that you would give us all
16 communications, transmissions with Mr. Block's
17 office, all of the data you received from Mr. Block's
18 office, all of your working papers, all of your
19 audits that you performed, all of the spreadsheets
20 that you utilized, anything that you used to develop
21 your opinions.

22 So it's very clear, and we will mark it as
23 an exhibit, but it's very clear that we didn't
24 receive any of that information from you.

25 So I would ask that you do provide that

1 information to Mr. Block, and I will make a formal
2 request to Mr. Block that he supplement your
3 response.

4 I also reserve the right to re-depose you
5 at a later time if there is any information in there
6 that would be relevant to your deposition, but I
7 still want to understand what information you have.

8 So the data that you analyzed came from
9 Mr. Block's law firm in two columns on an Excel
10 spreadsheet; is that right?

11 A. It wasn't an Excel spreadsheet. There were
12 more than two columns within the data.

13 Q. Okay. There were multiple columns?

14 A. Yes, sir.

15 Q. What were the multiple columns?

16 A. I cannot list all of those for you. I can list
17 some of the relevant ones that I can recall at this
18 time, but I cannot list them.

19 Q. Okay. Do you know how Mr. Block created that
20 Excel spreadsheet or that data?

21 MR. BLOCK: Object to form.

22 A. I do not know if he created it, received it, or
23 any of that.

24 Q. In your report, there is a reference to the
25 TIPS system. Did you ever have access to the Amazon

1 TIPS system in order to pull information to analyze
2 for this case?

3 A. If you are talking about a reference to the
4 name of the file received, I do not know the TIPS
5 system. I did not have access to it. I have not
6 used it.

7 Q. Okay. So you referenced the TIPS systems in
8 your report, but you didn't pull data from the TIPS
9 system?

10 A. The name of file may have included TIPS, but I
11 did not use the system.

12 Q. Okay. Do you know what the TIPS system is?

13 A. I am not aware of what a TIPS systems is.

14 Q. Okay.

15 A. Can I go to the restroom?

16 Q. Sure.

17 MR. KALLISH: Let's take a break.

18 (Five-minute break.)

19 BY MR. KALLISH:

20 Q. So back on the record. So Mr. Block mentioned
21 that there may be a -- you may have a medical issue
22 or something in terms of needing to eat or something
23 like that.

24 We talked about going until, like, 12:30
25 and taking a half hour break. Is that okay with you?

1 Or if not, if you need to eat now, or something, we
2 can eat now.

3 I don't want you to feel ill or, you know,
4 not be able to continue with the deposition, and we
5 certainly don't want to hurt you. So you just tell
6 me what you need, and I will accommodate you.

7 A. I appreciate that. I'm good at this time.

8 Q. Okay, all right. So if something changes or,
9 you know, let me know.

10 A. Yes, sir. Thank you.

11 Q. Okay. All right, thanks. Okay. So we were
12 talking about the TIPS system, and you mentioned that
13 you didn't pull any data out of the TIPS system. All
14 of the data that you analyzed was provided by
15 Mr. Block's office in a, in an Excel spreadsheet?

16 A. That's correct.

17 Q. Okay. Were you able to pull data off of that
18 and then run that data through your systems?

19 A. So we moved the data into an access database so
20 that I could query and use a form to enter the
21 figures that I needed to. We don't necessarily have
22 any systems that we run it through.

23 Q. Okay. All right. Did you ever ask -- strike
24 that. You didn't look at the weight and research and
25 inspection reports for the shipments that are at

1 issue in this case; did you?

2 A. No, sir.

3 Q. Okay. You didn't look at the bills of lading
4 for the shipments that are at issue in this case; did
5 you?

6 A. No, sir.

7 Q. Did you ever ask Mr. Block if those documents
8 were available?

9 A. I asked if they were available, and I was
10 provided a file. It mainly contained delivery
11 receipts.

12 Q. Okay. So you asked if the weighing and
13 research inspection reports were available, and
14 Mr. Block told you they weren't available, or he just
15 sent you something else?

16 A. I'm not sure that I even requested those. I
17 did ask for bills of lading. I do recall those.

18 Q. Did you ever review any bills of lading?

19 A. I did not.

20 Q. They weren't provided to you by Mr. Block?

21 A. Again, there was a file sent to me that was a
22 massive PDF file, and I'm not sure where that came
23 from, but, again, it mainly contained delivery
24 receipts.

25 Q. Okay. And what is on a delivery receipt?

1 A. It can have a multitude of information, and it
2 identifies the shipment, the origin destination.
3 Sometimes they pertain notes to billing, the
4 signature for receipt, how many pieces were received.
5 Most of the time it notates a weight.

6 Again, some of the notes from delivery
7 receipts that I have seen range almost directly to
8 what the freight bill provides.

9 Q. Okay. The delivery receipt doesn't have the
10 density calculations on it; does it?

11 A. There are some carriers that provide that, yes.

12 Q. The stuff that you looked at, did it have the
13 density calculations on it?

14 A. I did not review any of those, no.

15 Q. Did you review any data regarding the height or
16 length of the shipments that were involved that you
17 reviewed?

18 A. I did not.

19 Q. Okay. Do you think that would be helpful
20 information to your analysis, if you knew the height
21 and the length of the shipments that you were looking
22 at?

23 A. I do not find that it's pertinent information,
24 based on the fact that in my expert opinion that the
25 contract rating applies, which would not require me

1 to necessarily know any of that information.

2 Q. When you say "the contract rating applies,"
3 what do you mean by that?

4 A. Czar 2011 rates.

5 Q. So your expert opinion is that Central Freight
6 should not have spot quoted these shipments?

7 A. That is correct.

8 Q. Okay. And what is the basis of that opinion?

9 A. Because the contract does not allow for any
10 charges, as far as lineal foot or capacity loads.
11 Czar 2011 rates with discount and contract fuel,
12 there is a density minimum charge, which would not be
13 necessary in this case, however, they are LTL
14 shipments.

15 Q. Okay. Did you review any of the depositions of
16 the people that were involved with the negotiation of
17 the transportation contract in this case?

18 A. I reviewed no depositions.

19 Q. Okay. So you didn't review any of the
20 depositions of the people at Central Freight who did
21 the spot quoting; is that right?

22 A. I did not review any depositions.

23 Q. And you didn't review the depositions of the
24 rating personnel or the pricing people at Central
25 Freight, you didn't look at any of that?

1 A. I did not review any depositions.

2 Q. You reviewed no depositions?

3 A. That is correct.

4 Q. Okay. Did you ask Mr. Block to review
5 depositions in this case?

6 A. No, sir.

7 Q. Do you think that's pertinent to your analysis?

8 A. Again, my opinion is based on the contract, and
9 my expert opinion, therefore, is the contract
10 applies.

11 Q. Okay. But you don't, you don't have any
12 knowledge whether the contract was modified, whether
13 there was a side agreement between Amazon and Central
14 Freight, or anything that took place after the date
15 that they signed that contract?

16 A. I reviewed some emails that were part of
17 discovery, I believe, or whatever the term would be,
18 correct, and I reviewed those emails, as well as I
19 did find the email and the addendum that was offered
20 to add the eight foot stipulation into the contract,
21 and I reviewed where it was never signed.

22 Q. Okay. The eight foot -- what did you say?

23 What do you mean --

24 A. I'm sorry. Not foot, eight pallet.

25 Q. Okay.

1 A. I'm not sure what you guys are all referring it
2 to as directly, as the eight pallet.

3 Q. Are you providing an opinion that the addendum
4 that addressed the eight pallet issue is invalid; is
5 that an opinion you're offering in this case?

6 A. That is my opinion, yes.

7 Q. And what is that based on?

8 A. It is not signed. It is not in the contract.
9 The contract stands. That is my opinion.

10 Q. Okay. And you think that the testimony of
11 Amazon employees in terms of whether or not they
12 entered into an agreement with Central Freight are
13 irrelevant?

14 MR. BLOCK: Object to form.

15 A. Can you ask the question again? I'm sorry.

16 Q. So in your expert analysis of whether that
17 addendum modified the contract, you don't believe
18 it's pertinent, the testimony of Amazon employees as
19 to what they did or did not contract with Central
20 Freight?

21 A. My review is of the documents.

22 Q. Okay. Is it your opinion that that document
23 can never be modified, even if Amazon and Central
24 Freight agreed to modify it?

25 A. Ask me again. I'm sorry.

1 MR. KALLISH: Can you read it back to
2 her?

3 THE WITNESS: I'm sorry.

4 (The court reporter read back pending question.)

5 A. Agree how to modify it? I mean, it's a very
6 vague question. I'm sorry.

7 Q. Well, it's not really vague.

8 A. I'm trying to --

9 Q. Let's say that s transportation manager at
10 Amazon agreed to allow Central Freight to spot quote
11 eight pallet plus shipments, and Central Freight
12 agreed to spot quote eight pallet plus shipments,
13 would your opinion change then as to whether the
14 contract stands or whether it was not modified?

15 MR. BLOCK: Object to form.

16 A. It would not change my opinion.

17 Q. And why not?

18 A. Because, again, it comes down to the documents.

19 Q. So just so I understand, your opinion is that
20 in the transportation industry when there is a
21 contract, whatever is said in the contract is the,
22 the end all be all, and it's never modified, changed,
23 or, or the parties deviate from that in any way; that
24 is your opinion?

25 MR. BLOCK: Object to form.

1 A. That is not what I said. It can be modified.

2 Q. Okay. So how do you know this, this contract
3 wasn't modified?

4 A. The only document that I reviewed, as in
5 modifying this contract, would be the addendum. I
6 did review emails.

7 I'm not quite sure of the whole history of
8 those, because it was bits and pieces, but that there
9 was the fact that there was an addendum, and the
10 addendum was not signed.

11 Q. Okay. So you reviewed bits and pieces of
12 emails. Who provided you those emails?

13 A. It was -- there were a few in Regin's report,
14 Michael Regin's report. I did receive some from
15 Mr. Block's office.

16 Q. Okay. And in -- when you produced your file,
17 again, you didn't produce the emails that you
18 reviewed in order to form your opinions in this case;
19 is that right?

20 A. Yes, sir. I apologize. I did not provide the
21 electronic versions of anything.

22 Q. Okay.

23 A. And I will be happy to do so immediately.

24 Q. Okay. How many emails did Mr. Block provide
25 you?

1 A. I don't have a number for you. I'm sorry.

2 Q. Thousands?

3 A. No, sir.

4 Q. Hundreds?

5 A. No, sir.

6 Q. Do you know how many emails have been exchanged
7 amongst the parties in this case?

8 A. No, sir.

9 Q. Do you know how many email conversations have
10 been marked as deposition exhibits in this case?

11 A. No, sir.

12 Q. Do you think that's, the communication between
13 the parties, other than what Mr. Block handpicked or
14 cherry picked for you, you don't think that's
15 relevant to your opinion?

16 MR. BLOCK: Object to form.

17 A. I would like to state that they were not cherry
18 picked. There were a few that they sent on the front
19 end, and there were plenty that I requested and have
20 seen along the way that were not, again, directly
21 provided from his office but, again, in the Regis
22 report as provided for his witness testimony.

23 I do believe that there is some information
24 within these emails, but does it, again, change my
25 opinion, no. My opinion is based on the contract.

1 Q. Okay. And, again, can you give me a number of
2 how many emails you looked at? Is it less than ten?

3 A. If I'm guessing, and this is a complete guess,
4 maybe 20.

5 Q. Okay. When you perform a post-audit, do you
6 look at the communications between your client and
7 the carrier regarding agreements that they made
8 during the relationship?

9 A. I have. Usually there's not a lot of email
10 traffic once a contract is created, unless there is a
11 specific issue.

12 Q. And your ability to determine whether or not
13 there was a valid contract, is that based upon you
14 taking the course on transportation and the law; is
15 that how you based that opinion on?

16 A. It's from my work in the industry.

17 Q. Okay. Not based upon the course where you took
18 a course on transportation and the law?

19 A. No, sir.

20 Q. Okay. Did that, did that course talk about
21 contracts between carriers and shippers?

22 A. I believe that it did talk about some
23 contracts.

24 Q. Did that course say that if it's not in the
25 contract, and there can never be a modification, and

1 the carriers are held to the boilerplate of the
2 contract.

3 A. I'm sorry?

4 Q. Was that something that you learned in your
5 class?

6 A. That a contract can never be modified?

7 Q. Yeah.

8 A. No, sir. And I'm not saying that that's my
9 opinion, that it cannot be modified. It can.

10 Q. Okay. Under what circumstances can a
11 transportation contract be modified?

12 MR. BLOCK: Object to form.

13 A. Addendum, appendix.

14 Q. Oral modification?

15 MR. BLOCK: Object to form.

16 A. I do not know the laws regarding that.

17 Q. How about a course in conduct, can that modify
18 a contract?

19 MR. BLOCK: Object to form.

20 A. I'm sorry. I don't understand your question.

21 Q. Do you know what a course of conduct is?

22 A. No, sir.

23 Q. If a shipper asks a carrier to do something and
24 they do something over and over and over again, and
25 the carrier knows about it, and the carrier pays for

1 those services, and it goes on for years and years
2 and years, and the carriers -- strike that. Let me
3 ask another question.

4 So you're not familiar with the term
5 "course of conduct"?

6 A. No, sir.

7 Q. Okay. Could a transportation contract be
8 modified if a shipper asks a carrier to do something
9 over and over and over again, and the carrier does
10 what the shipper asks it to do, and the shipper pays
11 the carrier, could that act as modification of the
12 contract?

13 MR. BLOCK: Object to the form.

14 A. In my opinion, no.

15 Q. Okay. What is the basis of that opinion?

16 A. Simply, two wrongs don't make a right.

17 Q. Okay.

18 A. I'm sorry. Just because a shipper may pay a
19 carrier, it is not indicative of an agreement of
20 rates or how they were billed, thus the post-audit
21 claims industry exists.

22 Q. Okay. How many conversations did you have with
23 Mr. Block leading up to the drafting of your report?

24 A. Conversations before the report?

25 Q. Yes.

1 A. I didn't document all of the times that we
2 spoke, but there were a few times about the
3 information that they were seeking and basically what
4 my role would be, and continued conversation about
5 receiving documents and the rating software.

6 Q. Okay. So how many times did you talk to him?

7 A. It would be an absolute guess.

8 Q. Okay.

9 A. Five or six times.

10 Q. Okay. And for how long did you talk with him?

11 A. Usually no longer than 20 or 30 minutes.

12 Q. Okay. Did you talk with anyone else in his
13 office?

14 A. I have talked to Chris Rogers.

15 Q. How many times did you talk to him?

16 A. We have corresponded by email several times.

17 Q. And you have copies of those emails?

18 A. Yes, sir, and I will be happy to provide them.

19 Q. Okay. Other than Mr. Block and Mr. Rogers, did
20 you talk to anyone else at Foster Pepper about this
21 case?

22 A. I know that Kelsey was on a phone call or two
23 and had helped provide information.

24 Q. Why did you review the other unsigned addendums
25 that are referenced in your report?

1 A. Why did I review them?

2 Q. Yeah.

3 A. They were just submitted in the contract file,
4 and I opened it up and read it.

5 Q. Did you find it odd that there were so many
6 unsigned addendums in this matter?

7 MR. BLOCK: Object to form.

8 A. You know, that's a difficult question to
9 answer, because there can be lots of versions that go
10 back and forth before an agreement is reached to any
11 additions to a contract. You know, over years
12 there's going to be a lot of documents and
13 conversations.

14 Q. Do you know a gentleman by the name of
15 Christian Pillar (phonetic)?

16 A. I have seen the name on some emails, but other
17 than that, no.

18 Q. Okay. Are you aware that Christian Pillar
19 testified at his deposition that it is the policy of
20 Amazon not to countersign any affidavit that is
21 drafted by a carrier, although they will often comply
22 with those terms but not execute the addendum?

23 MR. BLOCK: Object to form.

24 A. I have not heard this, and I don't offer an
25 opinion.

1 Q. Would that have been relevant to your
2 assessment of these addendums that you looked at?

3 A. No, sir.

4 Q. Would that be relevant to your assessment of
5 whether there was a modification of the contract.

6 A. No.

7 Q. Do you think that's irrelevant?

8 A. I do.

9 Q. Is that a normal practice in the transportation
10 industry, to have a shipper that has a policy where
11 they won't countersign written addendums unless they
12 draft them, but they often honor them?

13 MR. BLOCK: Object to form.

14 A. I'm not privy to that with most of my clients.

15 Q. Okay. That's not relevant to your opinions,
16 though, in this case?

17 A. That's correct.

18 Q. Anything that Christian Pillar said concerning
19 the relationship between him and Central Freight
20 that's not relevant to your analysis, in terms of
21 whether there was a contract modification?

22 A. No, sir.

23 Q. Do you know who Joseph Crenager (phonetic) is?

24 A. I'm sorry. Who?

25 Q. Joseph Crenager.

1 A. No, sir.

2 Q. Okay. You don't even know who he is; right?

3 A. No, sir.

4 Q. Okay. In your report you referenced that you
5 reviewed the Complaint in this matter. Are you aware
6 that there was an Amended Complaint that was filed in
7 this case?

8 A. I did after I had rendered my opinion or
9 report.

10 Q. Okay. So when you rendered your opinion, you
11 never reviewed the Amended Complaint, right, just the
12 initial Complaint?

13 A. I did review the Amended Complaint.

14 Q. After you rendered your report?

15 A. Yes.

16 Q. So did that change anything in your report?

17 A. No, sir.

18 Q. Okay. Who provided you with the Complaint to
19 review?

20 A. I actually found the Complaint online.

21 Q. And you did your own researching and found the
22 Complaint?

23 A. Yes, sir.

24 Q. But you missed the Amended Complaint?

25 A. I was not aware that one existed, and I, again,

1 don't understand all of the processes, so I was not
2 aware that there would be one. However, it was
3 provided to me, and I have reviewed it at a later
4 time.

5 Q. Okay. The Complaint that you reviewed was the
6 redacted version that was online? Do you know what
7 "redacted" means?

8 A. That some of it was...

9 Q. Blocked out?

10 A. Blocked out.

11 Q. Yeah.

12 A. There was no blocking in this version.

13 Q. And of the original Complaint, there was no
14 blocking?

15 A. Not that I recall.

16 Q. Okay. What about in the Amended Complaint?

17 A. No, sir.

18 Q. Have you signed a confidentiality agreement to
19 review documents that are marked "attorney's eyes
20 only" or "confidential" in this case?

21 A. Yes, sir.

22 Q. Okay. Can you produce a copy of that as well?

23 A. Yes, sir.

24 Q. Okay. In your report you talk a lot about
25 carrier tariffs; is that right?

1 A. That's correct.

2 Q. What is a carrier tariff?

3 A. So it's their rules tariffs, which is provided
4 by the carrier. It is basically their standard
5 practices and charges.

6 Q. Okay. In what circumstances does a carriers
7 tariff apply?

8 A. It is understood to be applied as that as their
9 common practices and charges, unless there are
10 exceptions provided.

11 Q. Okay. If there is a contract between a carrier
12 and a shipper, and that contract specifically
13 identifies specific tariffs that apply, does that
14 exclude all other tariffs?

15 MR. BLOCK: Object to form.

16 A. I'm sorry. Could you ask the question again?
17 I'm so sorry.

18 MR. KALLISH: Could you read it back?

19 (Court reporter read back pending question.)

20 MR. BLOCK: Object to form. Go ahead.

21 A. If it is applicable, and it is not waived.
22 Now, if it is not applicable to begin with, then it
23 does not apply.

24 Q. If it's not applicable, then it doesn't apply.
25 But in a situation where you have a contract that

1 specifically identifies the governing documents, and
2 those governing documents do not reference the
3 carrier's tariff, does the carrier's tariff have any
4 relevance to the, to the relationship of the parties?

5 MR. BLOCK: Object to form.

6 A. It may not be applicable with that specific
7 shipper; however, it represents the carrier's
8 standard practices and prices, and, therefore, may
9 not be applicable but representative of the carrier.

10 Q. So when analyzing a contract between the
11 parties where the contract specifically states what
12 other governing tariffs and the carrier's tariff is
13 not one of those, one of those documents, then would
14 you say it has no application?

15 MR. BLOCK: Object to form.

16 A. Again, it isn't being applied; however, it's
17 representative of the carrier and their practices.

18 Q. Okay. If you were going to do an industry
19 comparison of Central Freight's rates, spot quote
20 rates versus an industry -- strike that.

21 When you did your industry analysis, you
22 rated the shipment that Central Freight had spot
23 quoted using industry leaders' rating systems; is
24 that right?

25 A. That's correct.

1 Q. Did you apply those industry leaders' tariffs
2 when you used their rating system?

3 A. In what, what form?

4 Q. In any form did you consider the industry
5 leaders' tariffs when you calculated the rate that
6 went into your industry average for shipments that
7 Central Freight spot quoted?

8 A. No. I used the rate from the rating software.

9 Q. Okay. And would the rating software take into
10 account the carrier's tariffs?

11 A. They do not.

12 Q. They do not. So if a carrier, one of the
13 industry leader carriers that you compared to Central
14 Freight had a linear foot rule, would that linear
15 foot rule have been applied when you ran the ratings
16 in order to create the comparison?

17 MR. BLOCK: Object to form.

18 A. It would not, and I didn't find that relevant
19 because, in my opinion, because we -- it has been
20 stated that these are boilerplate agreements that
21 Amazon uses with their carriers, then most likely all
22 other carriers would be on the same type of contract,
23 and that contract would, again, not include linear
24 foot or capacity load charges, and, I believe, again,
25 that these are LTL shipments.

1 Q. Okay. But you would agree that when Central
2 Freight spot quoted the shipments at issue, they were
3 spot quoting them because they wanted to get more
4 money than they would get under the contract, because
5 they believed these were volume shipments; correct?

6 MR. BLOCK: Object to form.

7 A. I don't know what they were thinking.

8 Q. Okay. You would agree that their spot quote
9 generates higher fees than the contractual rate;
10 right?

11 A. From my analysis, that's the opinion I
12 rendered.

13 Q. Okay. And that at least it was Central
14 Freight's position that the reason why they were spot
15 quoting it, as opposed to going under the standard
16 contract rates, was because they needed to get more
17 revenue, because these were larger shipments or
18 volume shipments; right?

19 MR. BLOCK: Object to form.

20 A. I'm sorry. I do not know what their course of
21 action or reasoning was. I was not necessarily
22 provided with all of that detail.

23 Q. Okay. When you ran the industry leaders, and
24 you created what the rates they were charged, there
25 was no accommodation at all in those rates for the

1 fact that these were large volume shipments; is that
2 right?

3 A. I would not have applied that because, again,
4 not applicable, in my opinion.

5 Q. Okay. Based upon the size of the shipments,
6 would it have triggered any of the leading industry
7 carrier's linear foot rule?

8 MR. BLOCK: Object to form.

9 A. I would have to review each of their carrier
10 rules tariff effective at time.

11 Q. So you didn't do that for your analysis?

12 A. No.

13 Q. You just ran a regular rate with no
14 consideration whatsoever as to the size of these
15 shipments, and spit out whatever the carrier's rate
16 calculator spit out; is that right?

17 A. That is correct, because the volume of these
18 shipments did not need to be relevant at this point.
19 Again, leading back to the boilerplate agreement,
20 they were not subject to these rules, these linear
21 foot rules.

22 MR. BLOCK: When you get to a good
23 stopping point, we can take a break.

24 BY MR. KALLISH:

25 Q. So, again, I just want to be very clear what

1 you did here. You took a number of leading LTL
2 carriers' rate software, and you ran what through
3 that process?

4 A. The class and weight that was billed.

5 Q. Class?

6 A. Weight.

7 Q. Weight?

8 A. Weight, origin, destination.

9 Q. Anything else?

10 A. That's what's required in the software.

11 Q. You didn't put in any dimensions of the
12 freight?

13 A. No.

14 Q. You didn't put any pallet counts in the
15 freight?

16 A. No.

17 Q. That's all you put in is those four characters?

18 A. That is correct.

19 Q. And that's what created a rate; is that right?

20 A. That is correct.

21 Q. And then you took that rate and averaged it
22 with how many other carriers' rates?

23 A. There were between four and six examples.

24 Q. Okay. Who were the example -- first of all,
25 why did you average those rates?

1 A. Because we wouldn't want to give one carrier
2 the rule on the industry. If these were the leading
3 carriers, we wanted to average these to get a
4 collective of what was expected in the industry, and,
5 again giving relevance to those that also perform in
6 the specific market only.

7 Q. When you perform an average, there can be some
8 really low carrier rates and some really high carrier
9 rates; is that right?

10 A. Sure.

11 Q. And when you average them together, it
12 diminishes the low end and the high end; right? It
13 gets averaged all together; right?

14 A. It could if there was a large difference.

15 Q. Okay. Why, why did you have to create an
16 average? First of all, why didn't you use a median?
17 Do you know what a median is?

18 A. Yes, sir.

19 Q. What is a median?

20 A. It is -- how do you explain it? Not the
21 average, but -- how do you explain it? I'm sorry.

22 Q. You don't know what a median is?

23 A. I have used a median. I'm sorry. I can't
24 define it.

25 Q. Right now?

1 A. Yes, sir.

2 Q. Okay. You didn't consider using a median when
3 you were doing your analysis in this case; right?

4 A. Right.

5 Q. Why do you think that an average is the right
6 way to do this?

7 A. Because it took into consideration, you know,
8 it could be -- it could go either way. All of my --
9 you know, I could have two carriers with extremely
10 high averages, and it pulled the rate higher.

11 I could have with lower, I could have on
12 either side, but it's the collective of the industry
13 leaders.

14 Q. So it's possible that in the six industry
15 leaders that you looked at, two of them could have
16 every time been more expensive than Central Freight's
17 spot quotes, but when you averaged them with the
18 lower ones, that brought the entire average of the
19 whole group to be less than Central Freight; is that
20 correct?

21 A. I'm sorry. Ask that question again.

22 MR. KALLISH: Can you read it back?

23 (Court reporter read back pending question.)

24 A. If -- is it possible, sure. Is it what
25 happened in this instance, we would have to go back

1 to the data and review to confirm.

2 Q. Okay. So you don't know if that's the
3 situation that I just described, if that occurred in
4 this instance; is that right?

5 A. I would have to go back to the data and review.

6 Q. Okay. So you have the data. So you have all
7 of the, all of the rate runs that you did for each of
8 the industry leaders, and I can look at those and see
9 if they were higher or lower than the Central Freight
10 shipments; right?

11 A. Yes, sir, that is correct.

12 Q. Okay. And you have that for six carriers.
13 That's what you used to create the industry standard?

14 A. Four to six.

15 Q. What does that mean, four to six?

16 A. There are some carriers that it was outside of
17 their operation, so if they did not operate in that
18 area, there were some that we could not pull
19 historical rates for.

20 Q. So I'm not understanding, how did you come up
21 with your analysis if that, if you had those issues?

22 A. Because each line was individually averaged.

23 Q. Okay. What are the names of the carriers' rate
24 systems that you used?

25 A. It's listed in my report. I can't remember

1 them specifically. I can give you some that I
2 remember. FedEx Freight, Oak Harbor Freight Lines,
3 USF, which is representative of USF Holland and USF
4 Reddaway.

5 Q. Uh-huh.

6 A. UPS Freight, XPO Logistics, formerly known as
7 Con-way Freight.

8 Q. Okay. What else?

9 A. I reviewed a lot of carrier stuff for this.

10 Q. Okay. I will show you your report. It's not a
11 memory test. I just wanted to try to get those down.
12 So at least for those -- let me finish those this
13 way.

14 At least for those carriers that you just
15 named, so you would have a file where for FedEx
16 Freight you took every one of the spot quotes subject
17 to the, the whittling down that you described in your
18 report, so the subset.

19 A. Right.

20 Q. You took each one of the subsets. You ran it
21 through the FedEx Freight software, and for each spot
22 quote, you have a price that FedEx Freight would have
23 charged to move the same shipment; is that right?

24 A. I do not have the price. I have the rate.

25 Q. What does that -- what is the difference

1 between the rate and the price?

2 A. So the rate is the carat weight for the
3 hundredth rate multiplier used. It's the weight that
4 is determined that is multiplied by the weight. You
5 know, it's produced from the class, origin,
6 destination.

7 It is multiplied by the weight to give you
8 a gross value. Again, because we weren't working in
9 gross values, we used the rates, the carat weight
10 rate.

11 Q. So you didn't look at what FedEx Freight would
12 ultimately charge a customer to ship the rate versus
13 what Central Freight charged to ship the rate?

14 A. That would -- it couldn't be an
15 apples-to-apples comparison because we are not
16 working in gross charges, and there is not a standard
17 industry discount. So therefore you couldn't produce
18 an apples-to-apples comparison.

19 Q. So you didn't look at the price that Central
20 Freight actually charged Amazon to compare at what
21 the rating systems would have charged Amazon if they
22 did the movement?

23 A. I'm sorry. Ask that --

24 MR. KALLISH: Can you read that back?

25 THE WITNESS: I'm so sorry.

1 (Court reporter read back pending question.)

2 A. We did look at the net value because that is
3 what is provided by the spot quote system. There was
4 a comparison of 2011 net rates.

5 That is post discount prior fuel or
6 accessorials or any of those charges added, and we
7 were able to use the carat weight rate to produce a
8 comparable net charge.

9 Q. Why not use gross charges?

10 A. Because, again, gross charge was not available
11 per the quote system in what we were able to analyze.
12 So if we can't have gross of one, we can't compare
13 gross of others.

14 Q. Where was the gross amount not available?

15 A. I'm sorry?

16 Q. Where was the gross amount not available?

17 A. For the spot quote volume rate.

18 MR. BLOCK: We have got to take a
19 break, Marc.

20 MR. KALLISH: All right. Let me ask
21 this one question.

22 BY MR. KALLISH:

23 Q. So the spot quote ultimately has an invoice
24 number of what they billed Amazon for the shipment;
25 isn't that the gross amount?

1 A. No, sir.

2 Q. What is it, then?

3 A. The net value, and there was a net value
4 pre-fuel surcharge and accessorial imposed. It was a
5 net value. There was no gross value. There was no
6 carat weight offered, as per this spot quote system.

7 Q. Okay.

8 MR. KALLISH: All right, break.

9 (Forty-two minute lunch break.)

10 BY MR. KALLISH:

11 Q. Back on the record. All right. Ms. Bolton,
12 I'm going to mark as deposition Exhibit 1 copies of
13 your report. It's two pieces. It's your initial
14 report and your supplemental report.

15 (Exhibit No. 1 was marked.)

16 BY MR. KALLISH:

17 Q. So I'm showing you what has been marked as
18 deposition Exhibit 1. Again, it is a two-part
19 document that contains your report. Is that true and
20 correct?

21 A. Yes.

22 Q. Okay. And this is the report that you prepared
23 analyzing the Central Freight billing that is the
24 subject of this dispute; correct?

25 A. Yes, sir.

1 Q. In terms of actually writing this report, were
2 you the one that actually typed it up, so you're the
3 one that actually wrote the report?

4 A. Yes, sir.

5 Q. Okay. Just subject to some other people kind
6 of looking it over and editing it; is that correct?

7 A. That's correct.

8 Q. I just want to rip through it kind of quickly.
9 Oh, you know what, before we get to that, I just want
10 to follow up on what we were talking about before.

11 So you told me that when you created the
12 industry average in order to compare to the Central
13 Freight spot quote billing amounts that the numbers
14 that you used were net amounts or gross amounts?

15 A. From what I used from the rater or the overall
16 comparison -- I'm sorry. Ask it again. I'm sorry.

17 Q. So, well, let's -- the information that you
18 were provided regarding the Central Freight spot
19 quote, what is your understanding of what that was
20 compiled of or consisted of?

21 A. There was a net amount from the freight volume
22 quote system, a net amount for the CzarLite 2011
23 rating for the contract.

24 There were also no gross amounts provided,
25 but a difference between net pre fuel surcharge and

1 accessorial imposed, fuel surcharge and accessorial.

2 Q. Okay. So the number that you were giving
3 regarding the Central Freight spot quote, did that
4 number contain the Amazon fuel surcharge amount?

5 A. No, sir. It was -- there were two different
6 versions, one pre fuel and accessorial, and one post
7 the application.

8 Q. So on the spreadsheet that you were provided
9 from Mr. Block's office, there were two columns that
10 related to the spot quote. One was the spot quote
11 without the fuels surcharge included and without any
12 accessorials?

13 A. Yes.

14 Q. And then there was another number, and that
15 number included the fuel surcharge and the
16 accessorials?

17 A. Yes.

18 Q. Okay. So which number did you compare to your
19 industry average for each of those, the one with the
20 fuel charge, or the one without the fuel charge?

21 A. Without.

22 Q. Without the fuel charge. Okay. And then when
23 you ran the, the rates of the industry leaders, when
24 you ran the shipments through those systems, what
25 number came out that you used to compare?

1 A. I used the carat weight.

2 Q. Okay. Explain to me what that is. I'm not
3 sure I'm following that.

4 A. Okay. I'm a better with pictures, but I know
5 that doesn't help you; does it? Okay. So when you
6 input the necessary information for the rating
7 software, it consists of you have to give it an
8 origin and destination, a weight, and a class.

9 It can involve a discount or a minimum
10 charge, but those were not used here, and it's not
11 required to produce the rate.

12 What it produces is based on your lane, so
13 your origin and your destination. It creates a scale
14 in the background, and the scale is based on, it goes
15 increasingly with class, and then it moves with the
16 weight increase. So you have a scale that's created.

17 And these are rates that are provided. And
18 depending on where it meets for your weight break in
19 your class, it provides a carat weight, which is a
20 hundred weight rate.

21 That is multiplied by the weight of your
22 shipment to determine gross charges. So it's a rate.
23 It's not a monetary value.

24 Q. Okay. And then ultimately, though, that gives
25 you the price that they would have hypothetically

1 charged?

2 A. Not a gross. The gross is not what is charged.
3 The net is what is charged.

4 Q. Okay. But after you, after it creates a carat
5 weight, and you multiply that times the weight of the
6 shipment, what comes out then?

7 A. The gross charge.

8 Q. Okay. And then what -- so, then, what do you
9 have to add to that in order to compare it to the
10 spot quote?

11 A. I did not use the gross charges to compare it
12 to the spot quote, because I did not have gross
13 charges of the spot quote.

14 Q. So tell me what you compared.

15 A. So the carat weight rate that can be produced
16 by all of these raters, including the Czar 2011
17 rater, because, again, I have to produce a net value
18 to be comparative to the net value as provided by the
19 quoting software.

20 So once the average industry carat weight
21 rate was determined, then it was compared different
22 of the increase over the Czar 2011 rate. Okay?

23 Q. Okay.

24 A. I just want to make sure. And then that was
25 multiplied into a number value as an increase of the

1 2011 amount. So, therefore, you have net charges, so
2 you can have an apples-to-apples comparison.

3 Q. So, then, that a number that came out of that,
4 you compared that to the spot quote?

5 A. That is correct.

6 Q. Okay. When you put in the origin, destination,
7 weight and class into the industry rating mechanisms,
8 did you compare that amount that came out from that
9 system to the Amazon contract rate under CzarLite?

10 A. I'm sorry. You're going to have to ask that
11 question again. I'm not sure.

12 Q. Did you ever compare any of the industry, any
13 of the industry leaders' rates to the Amazon CzarLite
14 contract rate that Central Freight was subject to?

15 A. You are asking the carat weight rate for my
16 industry leaders to my CzarLite 2011 carat weight
17 rate?

18 Q. Yes.

19 A. Yes. There was a comparison, because we
20 determined the percent difference between the two.

21 Q. Okay. So what was the percent difference
22 between the two?

23 A. I mean, it would be different for all of the
24 different moves.

25 Q. When you compared -- did you ever take your

1 average of your industry leaders average and compare
2 that to a straight CzarLite calculation of the
3 shipments using CzarLite 2000 and the contractual
4 discount?

5 A. Okay. I'm sorry. There's a lot in that
6 question. Can you ask that again? I'm so sorry.

7 Q. Okay. What I want to know is -- let me back
8 up, because I may not even understand how you came up
9 with this industry standard.

10 It's my understanding you looked at six,
11 four to six industry LTL carriers. You then took the
12 origin, destination, weight, and class information
13 that was available for all of the spot quote
14 movements.

15 You fed those through the rate software of
16 each of those industry carriers, and somehow you came
17 up with a price that they would have charged for the
18 same movements that Central Freight charge under
19 their spot quote; is that correct?

20 A. I believe I follow you correctly on that.

21 Q. Is that what you did?

22 A. That's a lot of steps, so can I regurgitate
23 that back to you? Is that okay?

24 Q. Okay. Let's try it again.

25 A. I'm sorry. There's a lot.

1 Q. Why don't you walk me through step by step
2 everything you did in order to come up with the
3 industry standard number?

4 A. Okay. Sure. So using what was used to bill
5 and determine the spot quote, which would be the
6 origin, destination, weight, and class, we put those
7 into the rating software, determined the carat weight
8 rates for those leading LTL carriers, found an
9 average, compared the average increase over the Czar
10 2011 rate increase, and then from there were able to
11 produce a net neutralized amount that would give us a
12 comparison of net, versus net, versus net.

13 So it would be the spot quote rater net,
14 versus the Czar 2011, CzarLite 2011 net, and then the
15 industry average net.

16 Q. Why do you, why do you compare when you put the
17 origin, destination, weight class into the industry
18 rates offer, why do you then compare that to the
19 CzarLite rate?

20 A. Because, again, we have to produce a net
21 number, and because there's not an industry discount
22 that is applicable here. There's not an industry
23 discount.

24 It's, it's produced from negotiations;
25 however, there was a discount already applied to the

1 2011 net. There's not necessarily a discount from
2 the Czar 2011 net, and so, therefore, we had to
3 produce a net charge.

4 Q. Okay. So I think maybe I'm understanding it
5 now. So when you just ran origin, destination,
6 weight, and class through an industry rate software,
7 it spits out a rate, but that rate doesn't have the
8 discount like the, which was provided to Amazon,
9 because the large amount of work that carriers were
10 doing for Amazon. So it didn't have a discount that
11 the contract had off of the CzarLite rate; is that
12 right?

13 A. There was not a discount applied to, right, the
14 rate that was produced by the rating software.

15 Q. So you had to apply some discount to bring the
16 numbers down that were coming out of the industry
17 leaders rate software.

18 You had to reduce that amount, because it
19 didn't have the discount that was built into the
20 contractual rates; is that right?

21 A. It was a gross amount, which is not inclusive
22 of a discount, and so that's why there was the
23 percent change from the Czar 2011 carat weight rate
24 to the industry carat weight rate, because it would
25 move basically at the same rate, given if they were

1 to get an applicable discount, again producing net
2 charges, which is after the discount, which is what
3 was provided in the spot quote, the CzarLite 2011,
4 and then in the industry.

5 Q. So in the industry, in the industry rating
6 system, they don't use CzarLite as the basis to get
7 their base rate?

8 A. It depends. Carriers are, have their own
9 proprietary software that they produce that is
10 available to the public and on their websites.

11 Now, CzarLite is a very common rater in the
12 industry because, again, it began with the rate
13 bureau, and so it's more balanced, I would say, among
14 the country.

15 And so a lot of carriers do, not carriers,
16 excuse me, shippers negotiate, and shippers and
17 carriers will use the CzarLite whatever year version
18 they would like, but carriers themselves do also have
19 their own proprietary software.

20 Q. So let me ask you this. When you plug in the
21 origin, destination, weight, and class into the
22 industry rating system, does that create a base rate?

23 A. Could you please define what you mean by "base
24 rate."

25 Q. Well, for instance, in the Amazon contract with

1 Central Freight, there was a -- you plugged in
2 origin, destination, weight class, et cetera, into
3 the CzarLite system, and it creates a base rate.

4 And then each carrier that worked for
5 Amazon would then subtract their contractual discount
6 and then apply a fuel surcharge, Amazon fuel
7 surcharge. That's how they got the rate?

8 A. Correct. I understand that.

9 Q. Okay.

10 A. By "base rate," you mean the carat weight rate?

11 Q. Is that synonymous?

12 A. Yes, sir.

13 Q. Okay.

14 A. Yes, sir.

15 Q. Okay. So let me ask you this then. In your
16 analysis, why didn't you just take the industry
17 rating system, plug in the origin, destination, and
18 weight class, and then take the discount that Central
19 Freight was using under the CzarLite calculation and
20 discount it off of that?

21 A. Because that wouldn't be an apples-to-apples
22 comparison necessarily. My 80 percent discount, or
23 whatever your discount may be applied to Czar 2011,
24 CzarLite 2011 base rates will not equate to the same
25 discount in the industry.

1 A lot of times the older the rater version
2 you use, and depending on all of the negotiation
3 factors, it's going to produce somewhat of a lesser
4 discount, because the rates haven't been subject to
5 over the years the general rate increase percent
6 average about 4.9 to 5.9 increase a year.

7 Q. So if you did it the way that I said, took your
8 rating information and put origin, destination,
9 weight and class and created a base rate, and then
10 took the contractual discount under the CFL Amazon
11 contract, would that number be less than the industry
12 average that you came up with for a specific
13 movement?

14 A. If I added an 80 percent discount?

15 Q. Yes.

16 A. To the industry raters that I was using --

17 Q. Yes.

18 A. -- would it be what? I'm sorry?

19 Q. Would it be less than what your industry
20 average came out to be?

21 A. Honestly, I would have to do that
22 calculation --

23 Q. Okay.

24 A. -- to be able to confirm either way.

25 Q. So I don't understand why you didn't do it that

1 way. Why, why do you take a base rate and then apply
2 some other discount, not the contractual discount, if
3 you're going to compare it?

4 A. Because it goes back, again, to we are working
5 in net values, and I'm not just comparing CzarLite
6 2011 rate versus the industry rate. You have the
7 third factor of the spot quote application net rate.

8 So, again, I have to work in net rates,
9 sorry, net rates, and so I have to give a net rate.
10 And it moves at the same difference as a Czar 2011
11 rater discount.

12 Again, these rates are different than those
13 rates. The 80 percent discount doesn't necessary --
14 it would not be acceptable in the industry that 80
15 applies to this, 80 applies to that. It wouldn't be
16 a correct comparison.

17 Q. Okay. And then the information that you put
18 into each one of the industry standard carrier's
19 rating systems, you made no accommodation for volume
20 of shipment or the dimensions of the shipment;
21 correct?

22 A. I did not. I did not find it applicable. I
23 was using LTL ratings.

24 Q. Okay. And you did not provide any additional
25 charge for the size of the shipment or account for

1 the size of the shipment whatsoever?

2 A. No, sir.

3 Q. And you did not apply any of the carriers
4 linear foot rules; is that correct?

5 A. That is correct.

6 Q. If you were to apply a carrier's linear foot
7 rule and then run the rate software, do you think
8 that the carrier's pricing would be higher or lower
9 than Central Freight spot quote?

10 MR. BLOCK: Object to form.

11 A. I could not answer that in any form. I would
12 have to go back to every single carrier's rule
13 tariffs, determine what their rules are for linear
14 feet, which is usually a per mile rater, so I
15 wouldn't even use a rating software at that point,
16 and the applications are different. It would have to
17 all be thoroughly done in order to say at all other
18 ways.

19 Q. Do you think that's a valid way to analyze
20 whether Central Freight's spot quotes were
21 reasonable, to take the same industry leaders that
22 you have chosen to look at, to look at their tariffs
23 to understand their linear foot rule, and then apply
24 their linear foot rule based upon dimensions, weight
25 class, destination information that's contained on

1 the documentation regarding the CFL shipment, and
2 then create a rate for a shipment and compare that to
3 the CFL spot quote?

4 MR. BLOCK: Object to form.

5 A. I did not find it necessary because I don't
6 necessarily find these shipments to be applicable to
7 linear foot rules.

8 Again, in my opinion, it wasn't applicable
9 for CFL. That is not how they are rating these
10 shipments as lineal feet, so I wouldn't compare it to
11 other carriers as lineal feet.

12 Q. But what if the shipments fell under their
13 linear foot tariff? Just based upon the size and the
14 dimension of the shipment, then would it be
15 appropriate to use their linear foot rule to
16 determine a proper rate?

17 A. That question is assuming that they would be
18 subject to it, and I do not -- I cannot confirm
19 either way whether they would or would not be. If
20 they were subject to it and met the threshold
21 standards, of course, it would be applicable.

22 Q. And so that would be a valid way to compare
23 Central Freight's volume quotes in terms of their
24 reasonableness?

25 A. I do not agree.

1 Q. Why not?

2 A. Because their volume quote rater was not based
3 on lineal foot, so you're not making a direct
4 comparison there.

5 We don't know whether or not it's
6 applicable, and so if it was applicable, sure, that
7 would make sense. But that's the assumption, that it
8 was applicable, and to most everything that I have
9 reviewed on this, again, these are LTL shipments, and
10 LTL rating would apply.

11 Q. Don't you think, don't you think it's unfair
12 when we know that Central Freight was charging
13 additional amounts because of the size of the
14 shipment to make no accommodation whatsoever for the
15 size of the shipment when you compare it to the
16 industry standard average that you created?

17 MR. BLOCK: Object to form.

18 A. They may have been doing that, but whether or
19 not that was applicable is, is the basis of this
20 whole thing.

21 Q. In an LTL, in an LTL scenario, if you had a
22 shipment that was -- if you had a shipment that was
23 750 cubic feet, do you think that you need to make
24 some accommodation for the size of the shipment when
25 you rate it?

1 MR. BLOCK: Object to form.

2 A. It depends.

3 Q. What does it depend on?

4 A. It depends on what rules that they are subject
5 to. You are talking about moving pieces and parts as
6 far as what the contract says they are subject to,
7 also depending on what the carrier's definition of
8 these volume shipments would be.

9 Q. So just so I understand, when you did your
10 industry average, you didn't make any accommodation
11 whatsoever for the number of pallets, the size of the
12 shipment, or the volume of the shipment; is that a
13 correct statement?

14 A. That is correct.

15 Q. And you believe that it's fair to compare LTL
16 shipments without taking into any of those factors to
17 the volume quotes that Central Freight did here?

18 A. That is correct, in my opinion.

19 Q. Okay. All right. I want to just go to, turn
20 to page three of your report. And this is a list of
21 the documents that you reviewed; is that right?

22 A. That's correct.

23 Q. So, again, you looked at the Complaint, not the
24 Amended Complaint; right?

25 A. That is correct.

1 Q. Okay. On the parts of the documents you looked
2 at, was it the Transportation Agreement and all of
3 its exhibits?

4 A. That is correct.

5 Q. You looked at B through K. Those were related
6 to addendums to the contract?

7 A. I have various forms of Exhibit B, as well as
8 Exhibit A.

9 Q. Okay. Let me -- here, let me go to 2-B. It
10 says Addendum 1 to Exhibit B-1 effective 8-26-2011,
11 not signed; do you see that?

12 A. Yes, sir.

13 Q. Do you know whether Amazon honored the terms of
14 that addendum?

15 A. Whether Amazon did, I'm not sure.

16 Q. Okay. Based upon your opinions you have
17 previously given through your deposition, would you
18 expect Amazon not to honor those provisions in that
19 addendum, because it's not signed, as you indicate on
20 2-B?

21 MR. BLOCK: Object to form.

22 A. I'm sorry. Can you ask your question again?

23 Q. It's a pretty simple question.

24 A. I'm sorry.

25 Q. If you look at 2-B, it says Addendum 1 to

1 Exhibit B-1, effective 8-26-2011, and then in
2 parenthesis it says, Not signed by AFS, which is
3 Amazon; right? Okay?

4 A. That's correct.

5 Q. Do you see that?

6 A. Yes.

7 Q. Okay. So you reviewed that addendum, and you
8 determined that it was not signed by Amazon; is that
9 right?

10 A. That's correct, the version that I had.

11 Q. Okay. So based upon your previous testimony,
12 would you then expect Amazon not to have honored the
13 terms in Addendum 1 to Exhibit B-1, because it was
14 not signed?

15 MR. BLOCK: Object to form.

16 A. That is correct.

17 Q. Okay. Same question as to 2-D. It says
18 Addendum 2 to Exhibit B-1 not signed; do you see
19 that?

20 A. Yes, sir.

21 Q. Okay. The fact that that addendum was not
22 signed by Amazon, would you then assume based upon
23 the opinion that you previously gave in this case
24 that Amazon would not honor the terms set forth in
25 Addendum 2?

1 A. Yes, sir.

2 Q. Okay. Going on to letter F. It says Amazon
3 freight consolidation at Mira Loma Exhibit B-1
4 effective 11-19-2012, not signed by AFS. Do you see
5 that?

6 A. Yes, sir.

7 Q. Okay. Based upon your previous testimony,
8 would you agree that since that exhibit was unsigned
9 that Amazon would not have honored the terms of that
10 exhibit?

11 MR. BLOCK: Object to form.

12 A. Yes, sir.

13 Q. Okay. Going down to G, it says, Amazon Freight
14 Consolidation of Fort Worth, Texas at Exhibit B-1a
15 effective 11-19-12. It says, Not signed by AFS. Do
16 you see that?

17 A. Yes, sir.

18 Q. So based upon your previous testimony, would
19 you assume that Amazon would not honor the terms that
20 were set forth in Exhibit B-1a?

21 MR. BLOCK: Object to form.

22 A. Yes, sir.

23 Q. Same question for H, Amazon Freight
24 Consolidation of Chicago, Illinois, Exhibit B-1b
25 effective 11-12, 11-19-12, and it says, Not signed by

1 AFS.

2 A. Yes, sir.

3 Q. You would believe that Amazon would not honor
4 the terms of that contract because it was not signed?

5 MR. BLOCK: Object to form.

6 Q. That addendum because it was not signed?

7 MR. BLOCK: Object to form.

8 A. Yes, sir.

9 Q. Addendum 3 to B-1 effective 12-23-2011, not
10 signed by either party. Would you agree that Amazon
11 did not have to be bound by that addendum and would
12 not honor the terms of that addendum?

13 MR. BLOCK: Object to form.

14 A. Yes, sir.

15 Q. Okay. Same question for Addendum 4 to Exhibit
16 B-1 and Exhibit A-1 effective 1-17-2014 where it
17 says, Not signed by Amazon?

18 MR. BLOCK: Object to form.

19 A. Yes, sir.

20 Q. And number three has those Journal of Commerce
21 articles relating to top 25 LTL carriers. What is
22 that information that you reviewed?

23 A. It was regarding those that were the top
24 industry leaders for LTL within those specific years.

25 Q. So that just identifies who are the top 25?

1 A. Yes, sir.

2 Q. That's all the information that you obtained
3 from those articles that are listed?

4 A. Yes, sir.

5 Q. In section three, three A, B, C and D?

6 A. Yes, sir.

7 Q. Okay. And that's what you used to create your
8 industry sampling?

9 A. Yes, sir.

10 Q. Okay. Okay. Then four says a lot -- you
11 reviewed a wide array of carrier rules tariffs for
12 focusing specifically on the topic of consolidation
13 of combining multiple shipments, multiple bills of
14 lading into one invoice; do you see that?

15 A. Yes, sir.

16 Q. So that was in regards to your analysis of the
17 NBOL issue, which is an issue between Amazon and
18 Central Freight regarding combining multiple bills of
19 lading?

20 A. Yes, sir, that's correct.

21 Q. Okay. And, again, would -- do you believe that
22 Central Freight's tariff would apply to this
23 situation?

24 A. It is not applicable, in my opinion, per the
25 contracting; however, it does represent the standard

1 practices of the carrier.

2 Q. Okay. And the tariff regarding Central Freight
3 -- strike that. CENF 100 effective 7-29-2013, do you
4 know what that relates to?

5 A. It's their rules tariff, Central Freight's
6 rules tariff.

7 Q. Okay.

8 A. Effective of that date.

9 Q. Is that the whole rules tariff?

10 A. Yes, sir.

11 Q. And is there a section that relates to multiple
12 shipments, multiple bills of lading?

13 A. There are instances where it states that
14 shipments that are picked up on the same day from the
15 same location going to the same destination can be
16 combined for invoicing purposes.

17 Q. When you say they -- you used the word "can be
18 combined for invoicing purposes." Is that directed
19 to the discretion of the carrier?

20 A. Yes.

21 Q. Would you agree that that tariff or that
22 provision being contained in Central Freight's tariff
23 is put there in order to protect the carrier from a
24 situation where a shipper wanted to get around the
25 linear foot rule contained in CENF's tariff and tries

1 to combine shipments in order to avoid the linear
2 foot rule?

3 A. Well, shipments combined wouldn't avoid the
4 lineal foot rule. I think they were two thoughts in
5 that question. Do you mind rephrasing for me,
6 please?

7 Q. Let me ask you this. You agree that the tariff
8 regarding multiple shipments, combining multiple
9 shipments and multiple bills of lading, those
10 tariffs are put in place to protect the carrier from
11 a shipper that's trying to get around the carrier's
12 rules tariff; right?

13 MR. BLOCK: Object to form.

14 A. The lineal foot rule specifically or --

15 Q. Well, let's say is it to protect a carrier from
16 a shipper trying to get around the linear foot rule?

17 A. It is a result of the history of the industry
18 where shippers were known to divide shipments onto
19 multiple bill of lading to avoid a larger shipment
20 that would be applicable to other such rates as
21 lineal foot rule.

22 Q. Okay. So it was actually the reverse of what I
23 said. Is that, the protection, is that when a
24 shipper separates out a bunch of shipments, it all
25 could go in one shipment, but if they went in one

1 shipment, they would be subject to a linear foot
2 rule, which would raise the overall rate on the
3 shipment?

4 A. They could be subject to a lineal foot rule.
5 It's a possibility.

6 Q. Okay. That is why the tariffs concerning
7 multiple shipments and multiple bills of lading are
8 in the Central Freight tariff, to protect the carrier
9 from a shipper trying to circumvent the lineal foot
10 rule of the carrier; is that right?

11 MR. BLOCK: Object to form.

12 A. Yes.

13 Q. Okay. It has nothing to do with saving money
14 for shippers by combining multiple bills of lading;
15 right?

16 MR. BLOCK: Object to form.

17 A. Can you ask the question again, please?

18 Q. Yeah. The purpose of those tariffs being in --
19 the purpose of the tariff that we just discussed
20 being in the Central Freight tariff rules is not to
21 provide cheaper shipping rates for shippers; right?
22 It's to protect the carrier from a shipper trying to
23 avoid the linear foot rule in the Central Freight
24 tariff; correct?

25 MR. BLOCK: Object to form.

1 A. It is there for the purposes which we discussed
2 about combining shipments, when shippers were
3 dividing them; however, it's not stating that they
4 can't be combined if it doesn't subject it to a
5 lineal foot rule. That's an assumption, but that's
6 not what's stated.

7 Q. It's at the, it's at the carrier's discretion
8 whether they choose to combine shipments or not;
9 right?

10 A. Depending on the wording.

11 Q. Okay. Did you look at the Central Freight
12 wording?

13 A. I did. I looked at several versions. I don't
14 have that one specifically with me at this time.

15 Q. Okay. So you don't know whether it was
16 discretionary or not in terms of the carrier's choice
17 of whether they want to break up the shipments or
18 not?

19 A. I can't confirm that at this moment without
20 re-review.

21 Q. Okay. All right, moving on. So on part four
22 there is a number of other tariffs that you looked
23 at, I guess; is that right? Those are from all of
24 the different carriers?

25 A. That is correct.

1 Q. Did you look at any of the linear foot rules
2 for any of those other, other carriers that are
3 listed there?

4 A. That was not the subject of my review, no, sir.

5 Q. So you didn't consider any of the industry
6 sampling carriers' linear foot rules when you did
7 your analysis here?

8 A. That is correct.

9 Q. You completely ignored it?

10 A. That is correct.

11 Q. Okay. Going to number five, it says, A wide
12 array of carrier rating software, listed below, for
13 focusing on the topic of determining an average LTL
14 industry rate, period.

15 The rating software chosen for comparison
16 rate purposes represented carriers who were LTL
17 industry leaders during the timeframe of the invoices
18 of concern.

19 These carriers were also representative of
20 the same market area in which the majority of the
21 shipments occurred. Rating software used included,
22 and then there is a list of all of the rating
23 softwares that you looked at?

24 A. That is correct.

25 Q. So those are the only ones that you looked at,

1 A through G; right?

2 A. That is correct.

3 Q. Okay. And so you believe that these carriers
4 are representative of the same market area in which
5 the majority of the shipments occurred. What market
6 area is that that you're referring to?

7 A. Specifically, to clarify, USF Reddaway and USF
8 Holland, and Oak Harbor are representative of a, the
9 close to the market area of Central Freight Lines,
10 while the other of these carriers are actually
11 nationwide carriers, so they do operate in that area
12 as well.

13 Q. When you were looking at a representative
14 carriers, did you make any inquiry into the capacity
15 in the particular marketplace for alternative
16 shippers to Central Freight?

17 MR. BLOCK: Carriers?

18 Q. Carriers. Did you understand the question or
19 no?

20 A. I did not. I'm sorry.

21 MR. BLOCK: You said "alternative
22 shippers."

23 MR. KALLISH: Okay. Let me start the
24 question over.

25

1 BY MR. KALLISH:

2 Q. When you were choosing carriers to be the basis
3 of your industry average, did you make any
4 consideration for the capacity in the marketplace in
5 which Central Freight was operating at the time in
6 which all of this billing took place?

7 A. So you're asking me did they basically have
8 available capacity to pick up these loads?

9 Q. Yes.

10 A. I did not.

11 Q. Okay. Would you agree that when capacity is
12 restricted, price goes up in a particular
13 marketplace?

14 A. In generalities, it can if it is not already
15 subject to a contract that already has established
16 rates.

17 Q. Okay. If capacity was tight at the timeframe
18 in which Central Freight was taking these shipments,
19 would you expect the sample carriers that were
20 operating the same market space to have increased
21 their rates in order to account for restricted
22 capacity?

23 A. I am not sure that I can answer that question
24 wholly. Again, I mean several of these carriers as
25 well carry contracts with Amazon as I found them

1 listed in one of the complaints.

2 So they already had an established
3 contract, so that would be what was applicable. It
4 would not be subject to the market at that time.
5 It's an established contract. As far as raising
6 rates, I don't understand in what capacity.

7 Q. Do you think that a carrier that was already
8 operating for Amazon that's contained within your
9 industry average that had no capacity to take on
10 additional work in the market area should be excluded
11 from your analysis?

12 A. This was not based on any capacity
13 availability. This was based on the industry
14 leaders. It wouldn't be necessarily factored by
15 capacity.

16 Q. So you don't think, you don't think market
17 capacity is a factor for that should be considered in
18 any way in regards to the reasonableness of Central
19 Freight's pricing?

20 A. Because they had an established contract, no.

21 Q. And if Amazon wanted to get an alternative
22 carrier to replace Central Freight, do you know
23 whether there was capacity in the marketplace for
24 someone to take over that work?

25 MR. BLOCK: Object to form.

1 A. I did not review LTL capacity. I have reviewed
2 truckload capacity during that time, and the market
3 was favorable for shippers.

4 Q. When you say you reviewed truckload capacity,
5 where did you review that information?

6 A. From -- it was a process to find -- I went to
7 truck stop dot com to find their MDIA index, which is
8 market demand index, reviewed their website, and they
9 did not have a table that I could review directly.

10 So I went to the link where they were
11 getting their information, which was trans four cast,
12 the number four trans four cast, who was a
13 collaboration between truck stop dot com and FTR
14 transportation intelligence, and I contacted them
15 directly for those specific readings.

16 Q. Okay. And did you do that before you reviewed
17 Mr. Regin's report, or after you reviewed it?

18 A. After.

19 Q. Because Mr. Regin cited that information in his
20 report; right?

21 A. That is correct.

22 Q. You never considered any of that information
23 when you did your report; right?

24 A. That's correct.

25 Q. Okay. What was your findings after you took

1 Mr. Regin's information and investigated it?

2 A. As far as?

3 Q. What were the conclusions -- what conclusions
4 did you come to?

5 MR. BLOCK: Object to form.

6 A. There were several. I don't understand what
7 you're, what you're asking. Do you want me to --

8 Q. So what you're looking at is after you reviewed
9 Mr. Regin's report, you decided to do what he did,
10 which was to check capacity using various tools that
11 are available in the marketplace. And so I'm
12 wondering whether your conclusions differ from
13 Mr. Regin's conclusions regarding capacity for
14 truckload?

15 A. It did.

16 Q. Okay. In what way?

17 A. Because his originally was based on 2014 to mid
18 2015. The invoices of the subject of this complaint
19 were 2015 to mid 2016, and so I had to get a
20 different set of data date range.

21 I specifically asked for the MDI for this
22 specific van market. Your options are reefer, van,
23 or flatbed.

24 Flatbed would not be applicable. It
25 exposed them to elements. Reefer, they didn't

1 require refrigeration services, so van would be the
2 specified service type that they would need.

3 I also looked at the MDI index in general
4 for the truckload industry, and I found that for the
5 van index specifically the, the market was in the
6 shipper's favor for the majority of that.

7 I believe it was like 89. something percent
8 of the time. Those ten-ish percent were not in the
9 carrier's favor but in between the two.

10 Q. Okay. Turning to your report page seven, I'm
11 at the start of where your opinions are; is that
12 right?

13 A. Yes, sir. That's -- well, this is not my
14 opinions starting -- oh sorry. I'm sorry. That is
15 correct. I apologize.

16 Q. So on page seven there is a section that says
17 Opinions Preface, and this is a description of how
18 you came up with the sample set of invoices to look
19 at. So you whittled down the amount of invoices that
20 you actually looked at; is that right?

21 A. That's correct.

22 Q. Okay. And, again, is it correct when I say you
23 looked at invoices, you didn't even look at invoices.
24 You looked at data points that were provided on a
25 spreadsheet from Mr. Block; is that right?

1 A. Invoice data that was received from his office.

2 Q. Okay.

3 A. Correct.

4 Q. And that was on the spreadsheet, so you didn't
5 actually look at the invoices?

6 A. That's correct.

7 Q. You didn't look at the EDI transmissions
8 between Central Freight and Amazon; right?

9 A. No, sir.

10 Q. And, again, we already talked about you didn't
11 look at the weight, inspection reports, or anything
12 like that?

13 A. That's correct.

14 Q. So all you had in order to perform your
15 analysis was information that was provided by
16 Mr. Block and the spreadsheet; is that right?

17 A. Mr. Block's office, that's correct.

18 (Brief interruption.)

19 BY MR. KALLISH:

20 Q. Okay. So, again, we were talking about your
21 opinion preface, and that's where you describe how
22 you whittled down the data points that were provided
23 by Mr. Block's office to create a subset in which you
24 then compared to the industry standard?

25 A. That's correct.

1 Q. Or the industry standard average?

2 A. That's correct.

3 Q. Okay. So I am just going to go through this
4 line by line real quick, so we all understand what
5 you did.

6 For the purposes of this review, a sample
7 of data representative of the original freight
8 billing data was used to reach the conclusions and
9 opinions contained herein, period.

10 Then it says, The sample was taken from the
11 original 6298 lines of individual shipment data from
12 the period in question that was provided for
13 examination.

14 So the 6298 lines of data, that was the
15 information that came from Mr. Block's office; right?

16 A. Right. One of them.

17 Q. And you don't know how they compiled that;
18 right?

19 A. I do not.

20 Q. Okay. And you said you tested it for accuracy?

21 A. For the CzarLite 2011 rates, yes.

22 Q. How many did you test?

23 A. I wouldn't know a specific number.

24 Q. Okay.

25 A. If I were to give an estimate, at least a

1 hundred.

2 Q. Okay. And do you have the actual data for the
3 test that you performed on those 100 samples?

4 A. I didn't make any entry on it.

5 Q. Okay. And then, so, were there also then,
6 there were 6,298 lines that represented the CzarLite
7 contract amount billed; is that right?

8 A. I'm sorry?

9 Q. Tell me, the 6,298 lines, tell me each column
10 that was on the spreadsheet that related to those
11 numbers. I'm trying to understand what you looked
12 at.

13 So there was 6,298 entries that had a
14 CzarLite calculation that was provided by Mr. Block's
15 office using the contract discount; is that correct?

16 A. That was one of the columns contained.

17 Q. Okay. And then there was a column, which was
18 represented to be by Mr. Block's office, the amount
19 that Central Freight billed under its spot quote; is
20 that right?

21 MR. BLOCK: Object to form.

22 A. That's correct.

23 Q. And that amount that was contained on that
24 actual spreadsheet that represented the spot quote
25 billed amount, was that the gross amount or the net

1 amount?

2 A. There were two options, one that contained a
3 net amount, and there was not a gross amount. It was
4 a net pre-fuel surcharge in excess accessorial, and
5 post that application of fuel, a net charge with the
6 addition of fuel and accessorial charges.

7 Q. So there were two columns, one had the fuel,
8 the fuel surcharge, and any accessories contained
9 within the dollar amount, and the other one had those
10 numbers backed out?

11 A. That's correct.

12 Q. Okay.

13 A. Yes, sir.

14 Q. All right. It says, The first step taken to
15 narrow the original data set was to choose origin and
16 destination zip code combinations that had at least
17 eight or more individual shipments. What do you mean
18 by that?

19 A. So I ran a group by query that any shipments
20 that, from origin to destination, such as North
21 Little Rock to Little Rock, occurred eight or more
22 times during this billing timeframe.

23 Q. Okay. So it was an origin and destination that
24 had repeated a shipment that had taken place at least
25 eight times?

1 A. That's correct.

2 Q. Okay. This has nothing to do with the size of
3 the shipment or the number of pallets?

4 A. That's correct.

5 Q. Okay. Now, why did you do that?

6 A. For comparative persons, not persons, for
7 comparative reasoning, we could see any -- it would
8 be easier to compare any discrepancies between
9 similar movements.

10 Q. Okay. Did you take into account the zip code
11 and origin and destination based upon whether it was
12 a lane, a regular lane of Central Freight, or an
13 outside network lane of Central Freight?

14 A. An outside lane of central network, could you
15 please define?

16 Q. Well, LTL carriers typically have lanes in
17 which they operate, where they have regular LTL
18 trucks that pick up from various customers on a
19 regular basis. Are you familiar with that?

20 A. Yes.

21 Q. Okay. They may have. Sometimes they were
22 asked to pick up something outside of their regular
23 lanes, and they usually surcharge, or they charge
24 additional money because it's outside of their normal
25 lanes, and there are a lot more expenses that are

1 involved. Are you familiar with that?

2 A. I don't know that there is a charge outside of,
3 which would be additional to, it would be built into
4 the rates that were produced by a rating software.

5 Q. Well, like in the spot quote system, that would
6 increase the rate; right?

7 A. Right, because it would increase the rates that
8 would be applicable.

9 Q. Right. So was that a consideration at all when
10 you were deciding what origin and destinations to
11 select?

12 A. I was not privy to what would be considered
13 Central Freight's standard lanes of operation.

14 Q. So you didn't consider that at all when you
15 made your sample set?

16 A. No.

17 Q. So it's possible that contained within your
18 sample sets are shipments that were outside Central
19 Freight's normal lanes; would you agree with that?

20 A. It could also include the opposite.

21 Q. Okay. But you would agree that it's possible
22 that some of the shipments that you obtained were
23 ones that were outside of Central Freight's normal
24 lanes?

25 A. It's possible that there were shipments outside

1 and within their normal lanes.

2 Q. And you would expect that if they were outside
3 of the normal lanes under the spot quote system that
4 there would be some increased charges for those
5 movements; right?

6 A. Not additional charges but built into the
7 actual rates.

8 Q. Right. You would agree with that?

9 A. Yes, sir.

10 Q. Okay. All right. These combinations of groups
11 of shipments allowed comparison of multiple shipments
12 for each origin and destination zip code combinations
13 and would highlight inconsistencies if there were
14 any.

15 So that's like where you looked at multiple
16 shipments that were on the same day, same zip code,
17 same origin, destination, same weight, and you found
18 that there were inconsistencies in the price?

19 A. It may not be an exact everything is the exact
20 same comparison.

21 Q. But that was what you intended to do. That's
22 why you wanted to have multiple groupings; right?

23 A. It was my intention to compare similar
24 shipments with one another.

25 Q. Okay. So this process reduced the original

1 data set to 3,327 lines of individual shipment data.

2 So that process that you engaged in almost cut it in
3 half, the sample size?

4 A. That's correct.

5 Q. Is that right?

6 A. That's correct.

7 Q. Okay. And in terms of sampling of data, is
8 there any reference that you have that suggested this
9 is a proper way to whittle down a data group into a
10 sample set?

11 A. There is no standard that I used to determine
12 that.

13 Q. Okay. And you didn't consult a statistician or
14 anything like that in terms of what the proper way is
15 to sample this amount of data?

16 A. No, sir.

17 Q. And you didn't look at any statistics, books,
18 or guidelines, or anything like that?

19 A. No, sir.

20 Q. And there is no auditor's guide in order to
21 create sample sets that you're aware of?

22 A. That's correct.

23 Q. So this is just your own process that you made
24 up for this project; is that right?

25 A. This is the process I used. Yes, sir.

1 Q. Did you have the input of the CEO or the COO on
2 this, or this is all you?

3 A. This was my methodology.

4 Q. Okay. Did Mr. Block help you with this
5 methodology?

6 A. No, sir.

7 Q. Okay. It says, The next step and final step
8 was to remove any shipment data where the total
9 amount billed for charges representing the cost to
10 move the freight from origin to destination with no
11 fuel or accessorial cost added was less than \$150.
12 Why did you remove those?

13 A. As the time constraint and the normal processes
14 that we may use within my office, a lot of times this
15 becomes negligible, this area, and due to, again,
16 time constraints, you're talking about rating 1,700
17 shipments four to six times a piece. This was a
18 fairly large sample, in my opinion.

19 Q. Okay. By the way, when you took the sample
20 from 6,298 lines down to 3,327 lines, had you used
21 that same process in other audits to reduce a sample
22 set?

23 A. I have not had to do this prior to this
24 situation.

25 Q. So this is the first time you ever did create a

1 sample set in the manner that you described here in
2 this opinion preface?

3 A. That is correct.

4 Q. Okay. And it was determined these low-dollar
5 shipments would produce results that ultimately would
6 be insignificant compared to shipments of greater
7 weights and billed charges. This resulted in a
8 working sample of 1,739 shipments.

9 So after you got rid of the \$150 shipments,
10 you wound up with 1,739 shipments; is that right?

11 A. That's correct.

12 Q. Shipments; is that right? It is individual
13 shipments; right?

14 A. Right. It is lines of data, which represent a
15 shipment a piece.

16 Q. Okay, gotcha.

17 A. Thank you.

18 Q. So then we go to where it says, A, and it says
19 in here, In order to render an opinion regarding Item
20 H 1, multiple aspects of the data and associated
21 considerations had to be made, period.

22 I have offered an overall opinion below,
23 but this is supported by additional information
24 offered in opinion support one through five.

25 So we're going to go down to H-1, and

1 that's going to be your opinion, and then the support
2 for that is contained in opinion support numbers one
3 through five; is that right?

4 A. H-1 is not my opinion. It is in my synopsis.
5 This is what I was asked to review.

6 Q. Okay. So that is what Mr. Block asked you to
7 review?

8 A. That's correct.

9 Q. And in reference to Item H-1, review the
10 shipments that CFL, in quotations, volume rated, to
11 determine whether the rate is reasonable or not,
12 period.

13 If not, comma, what would be a reasonable
14 rate for that shipment? That is what you were asked
15 to do by Mr. Block?

16 A. That's correct.

17 Q. Okay. All right. Under that in bold it says,
18 It was determined that, comma, of the sample
19 shipments, comma, 98 percent were billed above the
20 LTL contract rates contained in the Transportation
21 Agreement effective July 7th, 2011, and 63 percent
22 were billed above determined industry standard
23 average.

24 Do you see that?

25 A. Yes, sir.

1 Q. Okay. So the first part of that opinion is
2 that if you compare what Central Freight, after you
3 did the whittle down and created the sample set, if
4 you compared the sample set of the Central Freight
5 volume rates to the contract rates under CzarLite
6 with the discount that you found that 98 percent of
7 the sample set were higher than the contract rates?

8 A. Yes, sir, when comparing the net rates --

9 Q. Okay.

10 A. -- and fuel or accessorial.

11 Q. And the net rates, again, that was the
12 information that was provided by Mr. Block. You
13 didn't hand calculate the CzarLite plus the
14 contractual discount for all of the sample sets; is
15 that correct?

16 A. I did not confirm all of them, that's correct.

17 Q. Okay.

18 A. I did, as we discussed earlier, checked around
19 a hundred of those.

20 Q. Okay. In order to calculate the CzarLite
21 contractual amount, you would take the base rate,
22 which is the origin, destination, weight and class,
23 put into CzarLite, and that creates the base rate.
24 Then you take the contractual discount, and then add
25 in fuel, the Amazon fuel surcharge plus accessorials.

1 Is that right?

2 A. I did not add in the fuel surcharge or the
3 accessorials. There were two options prior to the
4 addition of and with the addition of fuel and
5 accessorials.

6 Q. Okay. It wasn't a big surprise that almost all
7 of these shipments when done on the Amazon spot quote
8 were going to be more than the contractual rate
9 because that was the intention of Amazon was to get
10 additional money for what they believe they deserved
11 for volume shipments; right?

12 A. I believe Central Freight was what you were
13 meaning, instead of Amazon.

14 Q. I'm sorry.

15 A. I know. I followed you.

16 Q. Okay, good.

17 MR. BLOCK: Rephrase the question,
18 please.

19 MR. KALLISH: Okay. I will rephrase
20 the question.

21 BY MR. KALLISH:

22 Q. It was not a big surprise when you did the
23 first part of your analysis to learn that the spot
24 quote prices that Central Freight provided to Amazon
25 were higher than the contractual rate, because that

1 was the intention of Central Freight was to get
2 higher rates, because they felt that they should get
3 additional money for these larger shipments; right?

4 A. So, again, I don't know the mindset of Central
5 Freight and why they did this necessarily. I was not
6 privy to all of that; however, I -- it would be my
7 expectation regardless that the spot volume quotes
8 would be higher because that is applicable to all of
9 their customers. Any customer could be applicable to
10 that.

11 Amazon as being one of the largest shippers
12 would negotiate -- it would be expected in the
13 industry that they would negotiate better rates.

14 Q. Gotcha. Okay. Great. And then the second
15 part of your opinion is that 63 percent were billed
16 above determined industry standard average rates.
17 What does that mean?

18 A. So once we went through all of the calculations
19 and determined the average industry rate as compared
20 to the industry LTL carriers that 63 percent of the
21 volume spot quote rates were above the industry
22 average that was determined.

23 Q. Okay. So that would mean that 37 percent of
24 the Central Freight spot quotes were, in fact, lower
25 than the industry standard average rates; is that

1 right?

2 A. Of the industry.

3 Q. Is that -- my statement is correct?

4 A. That's correct.

5 Q. Okay. So would it be your opinion then for
6 those 37 percent that the spot quotes were reasonable
7 and that Amazon should pay Central Freight for those
8 37 percent of the sample set?

9 MR. BLOCK: Object to form.

10 A. I would not say that even in those cases
11 necessarily that they would pay the spot quote rate
12 regardless, because it was not what was applicable.

13 Q. But it was less than --

14 A. In my opinion.

15 Q. -- your industry average, which you say is what
16 a reasonable rate is for this type of shipping;
17 right?

18 A. Yes, sir, and I can understand that that seems
19 a little backwards, but my philosophy is, and of our
20 office, carriers should get paid according to what's
21 applicable and agreed upon for the services they
22 provide, and a shipper should only have to pay
23 subject to what services they received and what is
24 applicable.

25 Q. Okay. But on the reasonableness which you were

1 asked to determine whether Central Freight spot
2 quotes were reasonable compared to an industry
3 standard.

4 You would agree that 37 percent of Central
5 Freight's spot quotes were reasonable when compared
6 with an industry standard average; correct?

7 MR. BLOCK: Object to form.

8 A. I do agree to the industry standard, however,
9 the industry standard as established is greater than
10 the contract rates, so, therefore, I still, in my
11 opinion, state that the contract rates apply.

12 Q. Okay. But let's put the contract rates aside.
13 Based upon your industry standard average rates, you
14 would agree that 37 percent of the spot quotes were
15 lower than what you say was the industry standard
16 average rate for the shipments at issue; correct?

17 A. That's correct.

18 Q. Okay. Do you believe that the industry
19 standard average rates that you calculated represent
20 a reasonable rate for these shipments?

21 MR. BLOCK: Object to form.

22 A. Not necessarily.

23 Q. So the comparison that you're making to our
24 spot quotes is not a reasonable rate either?

25 MR. BLOCK: Object to form.

1 A. That's not what I stated necessarily. Not
2 necessarily, again, because I will go back to the
3 contract rates of CzarLite 2011 is applicable, and as
4 stated 98 percent of the time this spot volume quote
5 rate was greater than the contract rate.

6 Q. But why go through this exercise of creating an
7 industry standard average and then comparing it to
8 the CFL spot quotes when you -- I guess what you're
9 saying is you don't even believe that the industry
10 standard average rate is a reasonable price to charge
11 for this work?

12 MR. BLOCK: Object to form.

13 A. That was what was asked for us to produce for
14 comparison analysis, and that's what we produced.
15 But, again, it's not saying that I'm not saying it's
16 not a reasonable rate expected within the industry,
17 but there's more to that than just the industry.

18 Q. How much less -- the 37 percent of the CFL spot
19 quotes that were less than the industry average, how
20 much in percentage were they less than the industry
21 average?

22 A. I did not produce that number in this report.
23 I would have to calculate that.

24 Q. But you did produce, the flip side of that,
25 when you found that the industry standard average

1 rates were less than the CFL volume rates, you then
2 calculate the percentage of how much more CFL rates
3 were than the, than the industry standard average
4 rate; right?

5 A. That's correct.

6 Q. Why wouldn't you do the flip side?

7 MR. BLOCK: Object to form.

8 A. I can produce that number, and I would be happy
9 to if asked.

10 Q. Okay. I don't want to spend too much more time
11 with this, but I'm kind of dumbfounded, I mean, to be
12 quite honest.

13 I don't understand that -- I just want to
14 make sure that your opinion is that even though
15 37 percent of all of the spot quotes of the sample
16 set that you selected that were billed by Central
17 Freight were lower than the industry standard
18 average, you still believe that those 37 percent of
19 the spot quotes were unreasonable, according to your
20 opinion, for Central Freight to have billed?

21 MR. BLOCK: Object to the form.

22 A. For Amazon specifically.

23 Q. Okay. If you assume for the purpose of this
24 question, that Central Freight had the right to use
25 its spot quote system to create a volume price, would

1 you agree that for at least 37 percent of the sample
2 set Amazon should pay Central Freight for those
3 movements?

4 MR. BLOCK: Object to form.

5 Q. Or those shipments?

6 MR. BLOCK: Object to the form.

7 A. If we're assuming that the spot volume quote
8 rate was applicable, is that what you're saying in
9 this scenario?

10 Q. Yes.

11 A. Would Amazon or should Amazon pay for the
12 37 percent that was below?

13 Q. Yes.

14 A. With the assumption that is not in my opinion
15 applicable that it is, that the quote is applicable,
16 I just want to clarify it is not an agreement with
17 me, but if we are assuming that, and it is
18 applicable, then that would be what is paid.

19 Q. Okay.

20 A. But, again, it is my opinion that it is not
21 applicable.

22 Q. Okay. And is it also your opinion that
23 anything that is above the industry, the industry
24 standard average rates that you developed is an
25 unreasonable amount for Central Freight to have

1 submitted as a spot quote, assuming that they have
2 the right to spot quote?

3 MR. BLOCK: Object to form.

4 A. Again, assuming that they had the right to spot
5 quote, and it was above industry average, if it is
6 agreed upon and applicable and binding that they use
7 that as their format, then that's what should be
8 paid.

9 Q. Okay. So it's not problematic to you that
10 67 percent of them were above the industry average?
11 If they had the right to spot quote, they had the
12 right to spot quote; it didn't matter?

13 MR. BLOCK: Object to form.

14 A. It absolutely concerns me.

15 Q. Yeah, but my question to you was simply because
16 a spot quote shipment fell into the range of being
17 above the industry standard average that you created,
18 does that in itself make the spot quote unreasonable,
19 if you assume that Central Freight had the right to
20 use its spot quote program to generate the volume
21 price, as they did in this matter?

22 MR. BLOCK: Object to form.

23 A. I think it is unreasonable; however, because
24 there is no regulated rate tariff bureau, a carrier
25 is pretty much subject to itself in determining its

1 rates.

2 So if that's what they set up to bill, then
3 that's their software, and that's their billing
4 practice, but, again, I do not agree with it.

5 Q. Okay. Let me just go back to the industry
6 standard average that you created. Again, you took a
7 number of carriers that were in similar market space
8 as Central Freight and used their rating system to
9 create a comparison rate to the spot quote; correct?

10 A. Yes.

11 Q. Okay. But you took all of the various industry
12 LTL carriers that were part of the industry average
13 group, you took their results. You added them all
14 together, and then you divided them by the number of
15 carriers; is that how you got the average?

16 A. Yes, sir.

17 Q. So and then did you do that on the final
18 amount? So, for instance, let's take, let's take,
19 what is it, Oak Haul -- what is that?

20 A. Oak Harbor Freight Lines.

21 Q. Oak Harbor Freight Lines. So you fed all of
22 the information into the Oak Harbor rating system,
23 and for each of the one, each of the 3,327 lines of
24 shipments that you fed into Oak Haul's rating system,
25 you then had, ultimately had a rate for each one of

1 those line items; is that correct?

2 A. My sample size was the 1,739, not the 3,000.

3 Q. You're right.

4 A. And there were a few specifically for Oak
5 Harbor that was outside of their -- they did not
6 service the origin or the destination. There were a
7 couple of those. So all rates that were returned, I
8 did.

9 Q. Okay. What I'm trying to figure out is when
10 you did the average. So did you take -- of the 1,739
11 shipments, did you go on the list and, say, Go to
12 line number 12, okay. And then you inputted all of
13 the information that you needed to input into the Oak
14 Haul; is that what it's called?

15 A. Oak Harbor.

16 Q. Oak Harbor rating system, and then you came up
17 with a rate for the Oak Harbor movement for line
18 number 12 on the, of the 1,739 sample site; right?

19 A. Yes, sir.

20 Q. Okay. And then would you do that for each of
21 the other industry sample LTL carriers? So there is
22 six of them, take all of their pricing, ultimate
23 pricing information, add them all together, and
24 divide it by six for each line, or did you do it in
25 bulk? Do you understand what I'm asking you?

1 A. Could you rephrase? I'm not sure that I'm
2 getting that question.

3 Q. Okay. So it's my understanding that you
4 created an industry standard average; right?

5 A. That's correct.

6 Q. Okay. And to me what an average means is, you
7 take the amount that was generated by a shipment for
8 each of the industry carriers. You take that amount.

9 You add all of those numbers together, and
10 then you divide by the number of carriers, and that
11 gives you an average. Do you agree with that?

12 A. Right. It was -- that's correct. It was the
13 rate, not the amount, but that is the correct
14 process --

15 Q. Okay.

16 A. -- of finding the average.

17 Q. So my question is did you create an average for
18 each line number of the 1,739? So for line number
19 12, you would have inputted all of the information
20 into six different carriers.

21 Each carrier came up with a rate, which is
22 a number. Then you took all of those numbers from
23 Oak Harbor, FedEx Freight, all of the various
24 industry LTL carriers, and then divided that by six.
25 And then you did that process for each line over and

1 over and over again, 1,739 times?

2 A. Right. It was, it was directly for that
3 specific line or shipment that it represents.

4 Q. Right.

5 A. It was done, each line was done separately.

6 Q. As opposed to -- the other thing would be,
7 would be to take all of the data for all of the 1,739
8 shipments and the aggregate, add it all together, and
9 divide it by six. Do you understand the difference?

10 A. Can you ask that again --

11 Q. Okay.

12 A. -- or rephrase.

13 Q. So, so one way we just talked about was you
14 take line by line the rate after you put it through
15 the calculator, and then add all of the various
16 sample LTL carriers' rates for that one line number,
17 number 12, add them all together and divide them by
18 six. That's one way to do this; right?

19 A. Uh-huh.

20 Q. The other way would be to take -- to do all of
21 the movements six times across all of the different
22 carriers, then add it all up in the aggregate and
23 divide it by six. Does it make a difference?

24 A. I guess I'm still not understanding the second
25 process that you're trying to describe. I'm having

1 trouble envisioning.

2 Q. Okay.

3 A. I'm sorry. I'm not trying to be complicated.

4 Q. So you have a spreadsheet for Oak Harbor, and
5 at the end there's a rate, say \$200; right?

6 A. I did not input a rate for, like a money rate
7 for the carriers. I entered a carat weight rate.

8 Q. Right, and that created the average?

9 A. Correct.

10 Q. And you did that line by line?

11 A. That's correct.

12 Q. We'll move on.

13 A. Okay, I'm sorry.

14 MR. BLOCK: Marc, when you get to a
15 good stopping point, can we take a short
16 break?

17 MR. KALLISH: Why don't we stop at
18 3:00?

19 MR. BLOCK: Twenty minutes?

20 MR. KALLISH: Well, okay, if we need
21 to stop now.

22 (Three-minute break.)

23 BY MR. KALLISH:

24 Q. Okay. Looking at page nine of your report?

25 A. Yes, sir.

1 Q. So look at the top, it says, On average, the
2 volume rate, slash, spot quote was billed above the
3 contract LTL, period. Transportation Agreement --
4 there is no period there, I'm sorry. Let me start
5 all over. I'm sorry.

6 On average, comma, the volume rate, slash,
7 spot quote was billed above the contract LTL
8 Transportation Agreement effective July 7th, 2011
9 contract rate amount was by 50 percent more.

10 So in this line are you saying that if you
11 compare the spot quote rates to the CzarLite contract
12 rates that the spot quote rates were 50 percent
13 higher than what the Amazon contract would have
14 provided?

15 A. In the instances where the spot quote was
16 higher than the contract rates, it was by 50 percent
17 on average.

18 Q. So the 50 percent excludes the 37 percent where
19 they were, where they could have been lower?

20 A. That's correct.

21 Q. Okay. Going to Opinion Support number two, and
22 it says, again, in reference to Item H-1, so then,
23 again, this is the same, this is support for the
24 consent of review the shipments at CFL in quotations,
25 volume rated to determine whether the rate is

1 reasonable or not, period.

2 If not, comma, what would be a reasonable
3 rate for that shipment? So this is the same analysis
4 that we have been talking about?

5 A. That's correct.

6 Q. Now, it says, it was -- your opinion says, It
7 was also determined using this sample data, that when
8 compared to an industry average net billed amount,
9 and then it says in parenthesis, the amount that
10 would be the result of gross charges less a discount
11 and that represent the totals as provided for in data
12 columns, and it says inv_charge_amt and
13 mfst_charg_amt, in parenthesis, that 56 percent of
14 the sample shipments were billed above industry
15 standard average rate.

16 That number, 56 percent, is different from
17 the number that you set forth on page 67, on page
18 seven of your report that says 63 percent were billed
19 above the determined industry standard average rate.
20 Why are those two numbers different?

21 A. Because when we initially started this process
22 we realized we used the wrong weight column, and so
23 we had to adjust for that, and we put in the correct
24 figures, but it appears that I did not go back and
25 correct my number in that opinion, but it would be --

1 Q. So the number should be the same. The opinion
2 that's set forth in page nine and the opinion that's
3 set forth on page seven, those should be the same
4 numbers; is that right?

5 A. That's correct.

6 Q. So it's just a typo?

7 A. That's correct.

8 Q. Okay. So which is the correct number? Is it
9 56 percent of the sample shipments were billed above
10 industry standard average rate, or was it 63 percent
11 were billed --

12 A. It was --

13 Q. Let me just finish the question.

14 A. I'm sorry.

15 Q. Was billed above the determined industry
16 standard average rate?

17 A. I apologize. It's the 56 percent.

18 Q. Okay. So in reality what you're saying,
19 then -- well, strike that. I'm not going to say in
20 reality.

21 So what you're saying then is 44 percent of
22 the Central Freight volume spot quotes were less than
23 the industry standard average rate on the sample set
24 that you reviewed?

25 A. That's correct.

1 Q. And so, again, if you assume that Central
2 Freight had the right to volume bill Amazon, you
3 agree that 44 percent of those spot quotes were
4 reasonable?

5 MR. BLOCK: Object to form.

6 Q. Correct?

7 A. These are a lot of assumptions that, again, in
8 my opinion, I do not agree with as compared to what
9 we determined to be an industry standard not
10 necessarily applicable to Amazon, yes, that would be
11 correct.

12 Q. Okay. And just to say it another way, you have
13 come to the determination that 44 percent of the
14 Central Freight spot quotes were less than the
15 charges that would have been incurred if your
16 industry standard average was used for these
17 shipments?

18 A. That is correct.

19 Q. Okay. Would you agree that if Central Freight
20 had the right to use its spot quote systems to
21 generate volume rates for these shipments that Amazon
22 at a minimum should pay for 44 percent of those
23 shipments because the spot quotes were reasonable?

24 MR. BLOCK: Object to form.

25 A. I don't agree with that.

1 Q. You agreed to it before, this, again, has the
2 assumption that Central Freight had the right to spot
3 quote?

4 MR. BLOCK: Object to the form.

5 A. If is under the assumption, again, that does
6 not agree -- I do not agree within my opinion, but if
7 we are assuming, and it has to be accepted that way,
8 then if it is applicable then, yes, but if it is,
9 again, in my opinion, not applicable so, no, it would
10 not, I would not expect them to pay that.

11 Q. But if it was applicable, you think Amazon
12 should pay Central Freight?

13 MR. BLOCK: Object to form.

14 A. If it's applicable, in my opinion.

15 Q. Yes?

16 A. Yes.

17 Q. Okay. If you look at page 11 of your report.
18 It says, Processes/Calculations used for opinion
19 supports one and two; okay?

20 This is an outline of the process that you
21 used in order to create a sample set, to develop the
22 industry standard average, and then to analyze or
23 compare the industry standard average to the Central
24 Freight spot quote. Is that correct?

25 A. That's correct.

1 Q. This is, this is step-by-step analysis of what
2 you did?

3 A. That's correct.

4 Q. Okay. If you look at where it says, Steps
5 taken to determine comparative industry rates. And
6 it says, A, it says, Received file named TIPS DATA
7 2153, Based on F_ID, end paren, in parenthesis, 6298
8 shipments, end parenthesis. Do you see that?

9 A. Yes, sir.

10 Q. That's the data that you received from
11 Mr. Block's office; is that right?

12 A. That's correct.

13 Q. Okay. You don't know what the TIPS systems is;
14 right?

15 A. That is correct.

16 Q. Were you aware whether, whether Amazon had an
17 internal system for estimating rates for shipments
18 invoiced by carriers?

19 A. I cannot remember if it was during this process
20 or after I had rendered this original opinion that I
21 did hear that there was an internal system.

22 I think I may have read it in the Amended
23 Complaint, I believe is where I read about it, that
24 they did either have a system or an internal auditor
25 mechanism of some sort.

1 Q. Are you familiar with those type of systems?

2 A. They are commonly referred to as rate engines,
3 or TMS, transportation management systems. I know
4 that some shippers do employ these, but it is not
5 something that I have used.

6 Q. Okay. So you're not familiar with it?
7 Correct?

8 A. That's correct. Sorry.

9 Q. Okay. What -- when you look at G, it says, The
10 table had additional fields added, with column names,
11 and it says FXF_CWT, and then little number, little
12 i, and ii, it says FXF_percentCWT_Increase. What is
13 that?

14 A. So the Roman numeral one with just the _CWT,
15 that is the carat weight rate that was produced by
16 the software when we entered the shipment
17 characteristics.

18 And then the FXF_percentCWT_Increase would
19 be the percent increase of that rater's carat weight
20 rate over the CzarLite 2011 carat weight rate.

21 Q. So you pumped up the carrier's carat weight in
22 response to the CzarLite carat rate. Is that
23 accurate, you increased it?

24 A. I'm not quite sure of that question.

25 Q. What did you do from step i to ii, what

1 happened during those two steps?

2 A. So once determining the FedEx Freight carat
3 weight that was entered into the data, then it was
4 the formula I used here to determine the percent
5 difference, which would be the increase here.

6 So the difference between 2011, CzarLite
7 2011 carat weight rate and the FedEx Freight carat
8 weight for that particular shipment.

9 Q. Okay. What does that mean, "increased"? What
10 are you increasing?

11 A. It's determining the difference, the percent
12 difference between the Czar 2011 carat weight rate
13 and the FedEx Freight carat weight rate.

14 Q. And what is the significance of that
15 difference?

16 A. Because it will have to be applied into the
17 next formula that was used, because there is not a
18 standard industry discount, and because we have to
19 net neutralize what we are working with to make net
20 versus net, versus net, the apples-to-apples
21 comparison, we, as a result of this increase,
22 therefore increased the net charges of the Czar 2011
23 based rate charges so that it was an even increase in
24 comparison.

25 Q. Okay. And then when you get down to iv there,

1 that's the same process just being done with UPS
2 then; is that right?

3 A. That's correct.

4 Q. Okay. So, and then that's repeated for each
5 of, all of the various sample carriers or standard
6 carriers; is that right?

7 A. Yes, sir, that's correct.

8 Q. Okay. So just bear with me, because I don't
9 understand this, and so that's probably my fault, but
10 I need you to really explain in the most explicit
11 details that you can provide exactly what you did for
12 step i, step ii, and step iii.

13 MR. BLOCK: Roman numeral one?

14 MR. KALLISH: It's not really a roman
15 numeral, those little i's.

16 MR. BLOCK: That's still roman
17 numerals, though.

18 MR. KALLISH: Okay.

19 BY MR. KALLISH:

20 Q. You know what I'm talking about; right?

21 A. Yes, sir.

22 Q. Okay. I always call it little i's and double
23 little i's, triple little i. Can you go through
24 roman numeral one, roman numeral two, and roman
25 numeral three in explicit detail and describe exactly

1 what you're doing, because I don't understand it?

2 A. Okay. I will try my best to translate. So for
3 i, this was the rate that was produced using,
4 specifically in this example it's FedEx.

5 So we will say FedEx, but represented again
6 for each carrier examples we use, we entered the
7 shipment characteristics into the software and
8 determined the carat weight rate applicable to that
9 shipment. So that was what that column is.

10 Then column two is where we inputted this,
11 inputted this equation, sorry, and determined I have
12 my CzarLite 2011 carat weight rate, and now I have a
13 comparative FedEx Freight carat weight rate.

14 I need to determine how much of an increase
15 or difference, I mean, it became an increase, but the
16 difference between those two rates would be.

17 Q. Okay.

18 A. Okay. And then to then arrive at a net value,
19 which we are now talking in money and not necessarily
20 rates.

21 Again, because we were provided with this
22 spot volume quote net value, we have a Czar 2011 base
23 contract value now for an industry net value, this
24 one specifically for FedEx.

25 We increased the Czar 2011 net value by the

1 percent difference, therefore, arriving at the
2 difference that would amount for the carrier.

3 Q. Okay. If we looked at the carat weight rate
4 for one of the 1,739 shipments at phase roman numeral
5 one, and compare that to the rate, or the net value
6 or the rate at roman numeral three, would the, would
7 the amount go up or down? Would the rate go up or
8 down?

9 A. I'm not sure I understand the question.

10 Q. Okay. Roman numeral one is take the rating
11 software, plug in the shipment criteria. That gives
12 you carat weight rate; correct?

13 A. Yes, sir.

14 Q. Okay. Does that tell you how much Amazon would
15 have paid for that shipment at that point without any
16 other adjustments?

17 MR. BLOCK: Object to form.

18 A. I'm not sure on this question.

19 Q. What do I do with -- what is a carat weight
20 rate; what is that?

21 A. It is the rate that is produced dependent on
22 the lane, origin, destination given the factors of
23 the weight break from the weight entered and the
24 class that's entered, and then it produces this rate
25 which is then multiplied by the weight to determine

1 gross charges.

2 Q. Okay. So you take that carat weight rate and
3 then multiply it by the weight of the shipment and
4 that gives you the gross amount that will be billed
5 to Amazon?

6 MR. BLOCK: Object to form.

7 A. It would not be billed. The gross amount is
8 not what is billed.

9 Q. Okay. Then what happens? So how do you get
10 from that amount, the gross amount to what is
11 actually billed to Amazon?

12 A. So, again, that's why we had to determine the
13 carat weight difference percentage.

14 Q. No, I want to just do this based on plugging in
15 the information into the rating system and then
16 getting the carat weight rate. I want to convert
17 that into a price. How do I do that?

18 A. You have converted it into a price of gross
19 charges.

20 Q. Okay. That's the gross charges?

21 A. Yes, that's correct.

22 Q. Okay. When you apply roman numeral two, does
23 that gross amount go up or down?

24 A. So I'm not using the gross amount. This is
25 still in the format of a carat weight rate and then

1 the percent difference between the two.

2 So it's not an amount, but it is an
3 increase. These numbers produced by the carrier
4 software would be an increase compared to the Czar
5 2011 base rates.

6 Q. Okay. So when you apply roman numeral two to
7 the carat weight base rate, does the carat weight
8 base rate go up or down?

9 A. So ultimately it would raise the carat weight
10 rate.

11 Q. And what does that do to the ultimate price?

12 A. It would raise the price.

13 Q. Making it more expensive?

14 A. That's correct.

15 Q. So when you applied roman numeral two, the
16 industry standard prices go up?

17 A. Correct, because it's the percent difference
18 between the CzarLite 2011 base rate and the industry
19 base rate. And it was greater, so I would
20 increase -- well, it's -- I mean, sorry. I'm having
21 difficulty explaining it, because we are moving from
22 carat rates to percentages to money. Maybe that's
23 some of the confusion here.

24 Q. Well, explain what the proper way is to do it
25 then. I just don't understand. I have no idea what

1 you're doing here. I don't understand, so I need you
2 to explain it to me.

3 A. Okay. So, again, we find the carat weight rate
4 of the carrier that we're using.

5 Q. Okay. Let me interrupt you. What is the carat
6 weight rate in layman's terms?

7 A. It's a hundred weight rate, so if it were -- if
8 the rate came out as 12.34, really you would multiply
9 the weight times .1234. It's a hundredth weight
10 rate.

11 Q. And how does that -- how does that relate to
12 the ultimate price that's charged?

13 A. Because the carat weight rate is what's
14 multiplied by the rate to determine the gross
15 charges.

16 Q. Okay.

17 A. It's basically the base.

18 Q. And the gross charges are for the, the fuel
19 surcharges added and the accessorials?

20 A. And discount.

21 Q. And discount?

22 A. That's correct.

23 Q. Okay. All right. So then the second roman
24 numeral is when you add the discount?

25 A. That's not correct.

1 Q. Okay. Tell me what happened in the second
2 roman numeral.

3 A. So on the second one you determine -- you, you
4 didn't do this. I'm sorry. It's where it's
5 determined that the percent difference between the
6 Czar 2011 base carat weight rate versus the industry,
7 one that we, for this carrier, that it came out. So
8 it's the percent difference between the two.

9 Q. Okay. And then what happened at the third
10 roman numeral?

11 A. So taking the increased percentage, we
12 increased the Czar 2011 base net amount by that
13 percent difference, the difference between the two
14 raters to produce a net charge.

15 Q. Okay. And then that is compared with the spot
16 quote charge?

17 A. That's correct.

18 Q. Okay. All right. And you did that for each of
19 the, each of the industry standard samples, and then
20 divide them all by six, add them all up, and then
21 divide them by six; is that right?

22 A. The rates were divided by six, yes, sir.

23 Q. Okay. All right. What is H, I, J, K, L, what
24 is that? Is that additional processes that were done
25 when you're rating these shipments?

1 A. So these, these above roman numerals, you know,
2 the one -- excuse me, you know, that was not nice,
3 that above matches with the three roman numerals for
4 each individual carrier; correct? Is that making
5 sense?

6 Q. No.

7 A. So, like, for roman numeral 1, 2, and 3 here
8 for FedEx specifically, this is talking about the
9 column creation.

10 This is just the actual steps. So in my
11 explanation that we just went through about what
12 actually happened in these steps, this is physically
13 entering the data. These are just the column headers
14 and describing what it represents and if there was a
15 formula used.

16 Q. When you say "these," are you talking about the
17 roman numerals and then the letters H, I, J, K, and
18 L, that is just data, the actually inputting of the
19 data?

20 A. That's correct.

21 Q. Okay. All right. Let's move on to page 14
22 then, and here it says, In reference to Item H-1,
23 period, review the shipment that CFL volume rated to
24 determine whether the rate is reasonable or not,
25 period.

1 If not, comma, what would be a reasonable
2 rate for the shipment? So that's the same task that
3 you have been given repeated again; right?

4 A. That's correct.

5 Q. Okay. Then it says, In my expert opinion that
6 the application for the flat charge of \$400, used in
7 certain instances as the lowest charge that could be
8 billed by CFL, comma, was not a reasonable charge,
9 period.

10 This charge is well above the contract
11 Transportation Agreement effective July 7th, 2011,
12 minimum charges, period. 100 percent of the
13 occurrences for this sample were billed, on average,
14 82 percent more than the contract minimum charges.

15 What are you saying here?

16 A. So using the data, there were a large grouping
17 of \$400 shipments that in my auditor intuition was
18 curious about. So pulling out these 400 shipments,
19 \$400 shipments indicated by an "M" in the class
20 column, which is pretty standard for a carrier to
21 indicate an "M" as a minimum charge being applied,
22 and this flat charge occurring consistently is a good
23 indicator as well.

24 In all of the cases of this grouping of
25 this continuously used \$400, it was billed on

1 shipments that would most likely be subject to the
2 minimum charge or something very close to it, and
3 this \$400 was well above the minimum charge listed in
4 the contract.

5 Q. What was the minimum charge that was listed in
6 the contract?

7 A. They were varying depends on lanes. I don't
8 have the contract in front of me. I believe 85 was
9 the highest.

10 Q. \$85 dollars?

11 A. Yes, sir, that's correct.

12 Q. Okay. And so you believe that Central Freight
13 was charging a minimum charge for what they
14 determined were volume shipments of \$400?

15 A. In certain instances, I do believe.

16 Q. Okay. Doesn't that seem inconsistent, because
17 in the analysis that you do in your report on page
18 20, 21, 22, 23, 24, 25, 26, 27, 28, there are
19 multiple shipments that are described there that are
20 under \$400, so how could there be a minimum charge?

21 A. That's why when I was responding about this I
22 said in certain instances. It's not every lane that
23 this was applicable.

24 Q. So there was a minimum charge only in certain
25 lanes?

1 A. For this grouping.

2 Q. How many specific minimum charges did you find
3 that were \$400?

4 A. If it's not listed in here, I don't have the
5 number for that at this time.

6 Q. What was the total dollar value of minimum
7 charges charged to Amazon that you think are
8 inappropriate?

9 A. I would have to look at the data specifically
10 to review all minimum charges.

11 Q. Okay. So are we talking about a hundred
12 minimum charges, a thousand minimum charges? How
13 many did you decide?

14 A. I can't speculate. I do not recall. That is
15 something that I would have to go back and filter the
16 data for.

17 Q. Do you know if the minimum charges were in
18 specific lanes? So could you look at the data and
19 determine that all of these minimum charges of \$400
20 were in specific lanes?

21 A. I could provide the origin and destination
22 imposed as related to these \$400 shipments.

23 Q. But you didn't do that; you didn't look at that
24 already?

25 A. I did not provide that, no.

1 Q. Do you know whether there are any anomalies
2 with those shipments? For instance, could it be
3 unpalletized shipments, could those be subject to a
4 minimum charge?

5 MR. BLOCK: Object to form.

6 A. What factors in for palletized and unpalletized
7 shipment could affect the NMSC classification that's
8 used. But as far as having a choice of palletized or
9 unpalletized in any other aspects, I have not ever
10 witnessed that.

11 Q. Are you familiar with any other carriers'
12 minimum charges?

13 A. Like their standard in their, their general use
14 tariffs or --

15 Q. Yes.

16 A. They're all different, but they are listed and
17 can publicly be found.

18 Q. Are you familiar with Estes Freight? Are you
19 familiar with that company?

20 A. Estes Express?

21 Q. Yes, Estes, Estates Freight?

22 A. Estate?

23 Q. E-s-t-e-s, Estes.

24 A. Estes Express?

25 Q. Yeah.

1 A. Uh-huh.

2 Q. Are you familiar with them?

3 A. Yes.

4 Q. Do you know what their minimum charge is?

5 A. I would have to review. That's not something I
6 have memorized.

7 Q. So you didn't look at that when you gave the
8 opinion that \$400 is an exorbitant amount for Central
9 Freight to charge?

10 A. Again, I didn't find it necessary as it's my
11 opinion that the contract would apply.

12 Q. Okay. But if there were other carriers that
13 also had a \$400 minimum charge, would you agree that
14 \$400 is not exorbitant?

15 MR. BLOCK: Object to form.

16 A. Again, it's in comparison to what I believe is
17 the applicable rates, which is in the contract, so
18 that would not be in consideration.

19 Q. Well, but for a large part of your analysis,
20 you're comparing what Central Freight did to industry
21 standards, so why wouldn't industry standards
22 regarding minimum charges be relevant?

23 A. I was asked to make that comparison, but that
24 does not reflect my opinion of what's applicable.

25 Q. Okay. So if I represented to you that Estes

1 also had a \$400 minimum charge, would you say that
2 Estes minimum charge is exorbitant, if it's in their
3 tariff?

4 MR. BLOCK: Object to form.

5 A. Again, because of deregulation, a carrier does
6 not have to answer to anybody about their rates or
7 their minimum charges. They are just trying to be
8 competitive in the industry. So they may bill as
9 they want.

10 Again, that's assuming -- again, that that
11 number even exists, which I find to be highly
12 unlikely, and that their tariff would even apply.

13 Q. Okay. But you have no idea how many times
14 Central Freight billed the minimum charge; right?

15 A. That's correct.

16 Q. So you don't know if it was significant in
17 terms of the overall billing that was done here;
18 right? It could have been five times over 6,000
19 shipments; is that right?

20 A. I could get you that number if it's of concern.

21 Q. But you didn't do that for your report, yet you
22 put this big graphic here showing that the average
23 percentage billed above contract rate when sampling
24 was a flat charge is 82 percent, but you didn't
25 really quantify that, how many times they did that?

1 A. Oh, I'm sorry. I apologize. This number right
2 here, 167 is the number of invoices.

3 Q. Okay.

4 A. I do apologize.

5 Q. Okay. So it was 167 invoices that were billed
6 at \$400 minimum charge across the whole 6,000, or
7 only in the sample set?

8 A. I did not specify, so I would have to re-run
9 that.

10 Q. Okay. You have to check on that; huh?

11 A. I am -- I will reserve that. I'm sorry.

12 Q. Well, it's not -- so, your report is inaccurate
13 there; right?

14 MR. BLOCK: Object to form.

15 Q. Because it doesn't specify whether it's over
16 the sample set or over the entire 6,000 shipments?

17 A. I don't know how that makes it inaccurate. It
18 just needs to be clarified.

19 Q. If you look at page 16. What is this? Is
20 this, again, just a description of the process in
21 which you have created the industry standard average
22 and compare it to the spot quote?

23 A. It's the sets that were necessary in order to
24 produce these results to support opinion three.

25 Q. Does any difference than what we have already

1 talked about?

2 MR. BLOCK: Object to form.

3 A. It's basically the same process.

4 Q. Why did you put it in support number three?
5 Why do you have to have another opinion support for
6 it?

7 A. Oh, I would like to clarify right here in the
8 notation, it's 167 shipments out of the 1,739. So it
9 was about ten percent in my sample.

10 Q. Okay. So does page 16, does this relate to
11 your analysis and process for determining the minimum
12 charge was excessive, or is this relating back to the
13 overall industry standard comparison?

14 A. This was specific to the steps that I had to
15 perform to render this opinion about the minimum
16 charge.

17 Q. All right. Then let's go through this. Let's
18 go to number one. It says, Using the shipment data
19 provided and internally generated figures the
20 following comparisons were made.

21 One, between what was billed per the volume
22 spot quote software, what would be considered the
23 industry average standard rate and what would have
24 been the amount billed using the contract rates.
25 What does that mean?

1 A. This, again, is just highlighting the approach
2 to our data.

3 Q. The what?

4 A. The approach to the data or process.

5 Q. Which data, which process?

6 A. The data that we received and the processes of
7 our calculations, what we were doing with the data.

8 Q. Okay. And then A, it says, Used filter of
9 equals 400 in the inv_charge_amount. Then in
10 parenthesis 167 shipments out of the 1,739.

11 What does that mean?

12 A. So anywhere that the amount charged in the
13 invoice charge amount which is representative of this
14 spot volume quote amount charged on the invoices when
15 it was \$400, and, again, this would be the net value
16 prior to fuel surcharge or accessorial applications,
17 it was the filtering that we did, and that was the
18 number of shipments that were the result of that
19 filter.

20 Q. Okay. Then if you look at roman numeral one,
21 it says, Group By query was built to determine number
22 of shipments which the billed amount, and then it
23 says, inv_charge-amt, was greater than the applicable
24 contract amount, in parenthesis mfst_chrg_amt, end
25 parenthesis. What does that mean?

1 A. So it was a comparison of the \$400 charge, as
2 compared to the application of what would have been
3 billed according to the contract rates.

4 Q. Okay. Did you do that same comparison compared
5 to the industry standard?

6 A. I did not run it against the industry standard.

7 Q. Why not?

8 A. Because, again, it's in my opinion that the
9 contract is what applied.

10 Q. Okay. It's possible that the 400 minimum
11 charge could have been less than the industry average
12 standard?

13 A. I find that highly unlikely, given my
14 experience in the industry.

15 Q. But you didn't run the numbers; right?

16 A. I did not look up all of those charges. No, I
17 did not.

18 Q. When you say "all of those charges," it was
19 only 167 shipments; right?

20 A. You are asking did I look up the minimum
21 charges. I would have to go and look at every
22 carrier that we used in this sample.

23 I would have to find their minimum charges,
24 as per their rules tariff, because it would be
25 different for every carrier.

1 And then there could be complexity in the
2 fact that it would be dependent on some other factors
3 that could --

4 Q. What about just comparing the minimum charge
5 versus the industry standard rate that you compiled
6 for those, on those shipments?

7 A. I did not run these specifically. They were
8 included in the grouping of the 1,739 shipment
9 comparison, but as far as comparing to the industry,
10 I did not do that step specifically on this grouping.

11 Q. But you could have; right?

12 A. Sure.

13 Q. And then it says, Then the average percentage
14 above contract rate was determined. What is that?

15 A. I'm sorry. Where are you referencing?

16 Q. It's the bullet after roman numeral one.

17 A. So the amount that would be -- sorry. I'm
18 trying to separate these steps. So the percent of
19 invoices above the billed volume spot quote rate as
20 compared to above the, the contract rates.

21 Q. Okay. And then the next open bullet says,
22 Column PctDiff between charges was created. And then
23 there is a square bullet, and it says, This is a
24 percentage change between using the contract
25 specifications for rating shipments, in parenthesis,

1 off manifest, underscore, amount, end parenthesis,
2 and a volume spot quote rate amount that was billed.
3 And then in parenthesis there is this inv_charge_amt,
4 end parenthesis, was determined for comparative
5 purposes.

6 What is that?

7 A. So if you reference back to page 16, this
8 82 percent, the average percent billed above contract
9 rate when sample invoice is flat charged \$400. So
10 that's the percent amount above the minimum charge.

11 Q. Okay. Is all of the rest of the stuff on page
12 16, does it relate to this minimum charge?

13 A. That is correct.

14 Q. Okay. Let's move on. Moving on to page 17.
15 So this says, in your opinion, it says, Using a
16 sample of 1,739 shipments of the original 6,298
17 shipments, it was determined that 98 were billed
18 above contract rate?

19 MR. BLOCK: 98 percent.

20 Q. Ninety-eight percent were billed above contract
21 rate, period. This is of significance because,
22 comma, in my expert opinion, comma, the LTL contract
23 rating should be applicable, period.

24 The sample shipments reviewed would have
25 qualified for LTL shipping rates given the following

1 reasons.

2 So it's your opinion that all of the
3 shipments that were in the sample set should have
4 qualified as LTL shipments, meaning there should have
5 been no additional charges based upon the size of the
6 shipment or the volume of the shipment; is that
7 correct? Is that your opinion?

8 A. In accordance with the contract.

9 Q. What does that mean, "in accordance with the
10 contract"?

11 A. It is LTL rates. There's no exceptions to it.

12 Q. Okay. So your opinion is based upon the fact
13 that the contract makes no exceptions for volume
14 rates?

15 A. That is correct.

16 Q. Okay. Then you go to number one. It says, In
17 the motor carriers industry many transportation
18 providers consider shipments to be LTL when they
19 weigh less than 20,000 pounds and are rated using
20 rates from weight breaks that are below the 20,000
21 pound weight break.

22 What does that mean?

23 A. So the first part of this is most carriers
24 define LTL's as less than 20,000 pounds, and it's not
25 necessarily based on pallet spaces.

1 And it's also rated using the weight breaks
2 that are below 20,000 pounds, because when you use a
3 rating application, there is, there is an opportunity
4 where if they were to -- for instance, you have a
5 4,500 pound shipment.

6 At 4,500 pounds it would be subject to the
7 2,000 pound line weight break rates, because, again,
8 our rates are by class and by weight breaks.

9 However, if the rater can determine that if
10 you were to pay for 5,000 pounds, and the 5,000 pound
11 weight break at 5,000 pounds would be cheaper, then
12 it bumps the weight, and you get that rate.

13 So there could be shipments that are
14 between 10,000 pounds and 20,000 pounds, where
15 there's a 10,000 pound weight break and the 20,000
16 pound weight break where the rater may in its
17 calculations that it's told to perform would think
18 that bumping it to the 20,000 pound rate and paying
19 for 20,000 pounds would be cheaper.

20 But so long as this shipment is under
21 20,000 pounds and is multiplied by nothing higher
22 than the 10 M carat weight rate, the weight break for
23 that rate, then it's considered LTL.

24 Q. Is it your opinion that the only criteria to
25 determine whether a shipment is an LTL shipment or

1 not is weight?

2 A. Not the only criteria.

3 Q. What other criteria determined whether an LTL
4 shipment is -- strike that. What other criteria are
5 involved in determining whether a shipment is LTL?

6 MR. BLOCK: Object to form.

7 A. LTL is when you do not use the full capacity of
8 a trailer.

9 Q. Okay. So are there some circumstances where a
10 shipment would not be 20,000 pounds, but would,
11 nonetheless, be constitute, nonetheless would
12 constitute an LTL shipment?

13 A. I'm sorry. Can you re-ask that question?

14 Q. Is there circumstances where a shipment does
15 not weigh 20,000 pounds, but, nonetheless, should not
16 be considered an LTL shipment?

17 MR. BLOCK: Object to form.

18 A. If it, you know, would require a 40-foot
19 trailer, it couldn't be LTL.

20 Q. Well, what about a shipment of feathers that
21 takes up 80 percent of the capacity of a trailer,
22 should that still be considered an LTL shipment, in
23 your opinion?

24 MR. BLOCK: Object to form.

25 A. Yes.

1 Q. Why?

2 A. It doesn't fill the full capacity of the
3 trailer. And even at that, if you're using an LTL
4 carrier, again, there are rules in their rules
5 tariff, if applicable, that account for these
6 shipments called capacity loads, and it is, you know,
7 it's dealing with larger volume shipments, including
8 the full capacity of an LTL trailer.

9 But there's a difference between an LTL pup
10 trailer, a 28 feet, and a truckload trailer that on
11 average begins at 40 feet.

12 There can be LTL shipments that actually go
13 beyond a 28-foot trailer, therefore, again, applying
14 capacity load and then overflow charges, which would
15 be LTL charges, for those beyond a 28-foot trailer.

16 Q. When determining whether there is an LTL
17 shipment or not, should you consider whether pallets
18 are stackable? Is that important?

19 A. It is not necessarily about stackable pallets,
20 especially given where the industry is now with
21 loading bars or decking bars, which allows freight
22 that can't be directly stacked upon, but if there is
23 room above it, you can place pallets on these bars
24 and, therefore, occupy the space above it.

25 Q. What about a shipment that's high, like a 98

1 inch shipment?

2 A. So it would be to the ceiling?

3 Q. Yeah, does that get different treatment?

4 MR. BLOCK: Object to form.

5 A. Not necessarily.

6 Q. So you think that a pallet count is irrelevant
7 to whether a shipment should be considered LTL or
8 not?

9 A. Yes, sir.

10 Q. So a 25 pallet shipment, that should be LTL if
11 it's under 20,000 pounds?

12 MR. BLOCK: Object to form.

13 A. Sure.

14 Q. Yes?

15 A. Yes.

16 Q. A shipment of pillows that takes up 90 percent
17 of the trailer, is that LTL?

18 A. Yes.

19 Q. No matter how many pallets it's on?

20 A. That's correct.

21 Q. In your analysis you didn't consider pallets
22 whatsoever; right?

23 A. That's correct.

24 Q. In your opinion, pallets are irrelevant?

25 A. That's correct.

1 Q. The only thing that matters is weight?

2 MR. BLOCK: Object to form.

3 A. In this scenario, yes.

4 Q. And why is it in this scenario?

5 A. Because, again, it is in my opinion that the
6 contract applies and that, therefore, the LTL rating
7 application applies for these movements.

8 Q. So you believe that Central Freight was stuck
9 with whatever Amazon gave them, because there wasn't
10 a linear foot rule in the contract?

11 A. I would not call it "stuck." I -- in my
12 opinion and in my experience in the industry, I have
13 witnessed contracts where this rule is waived for
14 other shippers.

15 I have experienced where a reduced rate is
16 offered. I have also experienced contract instances
17 where the footing that would enact such a rule as
18 lineal foot or capacity was moved beyond to a greater
19 length. So I don't find it that they're stuck with
20 this, in my opinion.

21 Q. If you assume for the purpose of this question
22 that Amazon did enter into an, did enter into a
23 modification of the Transportation Agreement which
24 allowed Central Freight to spot quote eight pallet
25 plus shipments, then do all of your opinions on page

1 17, are they out the window?

2 MR. BLOCK: Object to form.

3 Q. Are they inapplicable to this situation?

4 A. Can you ask the question again? I'm sorry.

5 Q. If you assume for the purpose of this question
6 that Amazon and Central Freight did modify the
7 Transportation Agreement to allow Central Freight to
8 volume bill eight pallet plus shipments, would you
9 agree that all of the opinions that are set forth on
10 page 17 and 18 of your report are irrelevant?

11 MR. BLOCK: Object to form.

12 A. I do not agree.

13 Q. Why?

14 A. Because in the review of some of these
15 shipments, even though we didn't factor in pallets,
16 we did review weight and shipments that were only a
17 few hundred pounds to even a hundred pounds would not
18 constitute eight pallets, yet they were included in
19 the 6,298 shipments.

20 Q. So part of your report is that you believe that
21 Central Freight misrepresented that there were eight
22 pallets in a shipment when there were not eight
23 pallets; is that right? Is that one of your
24 opinions?

25 A. I cannot say that, because I am not looking at

1 that data.

2 Q. Is one of your opinions that Central Freight
3 billed Amazon for eight pallet plus shipments in
4 circumstances when you determined based upon your
5 review of the data that those pallets, that there
6 could not be eight pallets in that truck, based upon
7 weight?

8 A. I did not specifically seek that opinion out;
9 however, as I stated, shipments under a hundred
10 pounds, if you're talking about pallets themselves,
11 the common industry pallet weighs between 40 and 60
12 pounds, so how could you have eight pallets if your
13 shipment was less than a hundred pounds? There is
14 not enough weight to constitute even just pallets
15 being on the truck.

16 Q. Did you look at that individual data line that
17 had that information and pull the weight and
18 inspection report to determine whether the
19 information that was on your data points were
20 accurate?

21 A. I did not pull inspections, no.

22 Q. Do you think the inspection report -- strike
23 that. Do you know whether an inspection report would
24 provide the answer to your question as to whether
25 there were eight pallets in the circumstances of

1 which data, the data that you discussed suggests that
2 it was impossible that there were eight pallets?

3 A. There were two weight columns as provided in
4 the data. One was what was originally submitted, and
5 then one as to what was actually used in billing,
6 which would be the result of any inspection, and,
7 therefore, there were changes between the two.

8 Q. Is it possible that that information was
9 misentered, manually misentered?

10 A. Humans make mistakes.

11 Q. So that's possible; right?

12 A. That's possible.

13 Q. So wouldn't the prudent thing to do would be to
14 pull the inspection report before you gave this
15 opinion to verify that your statement was right
16 before you accuse Central Freight of misrepresenting
17 a pallet count?

18 MR. BLOCK: Object to form.

19 A. I did not accuse them of that. That is not my
20 statement. I'm just drawing a conclusion of what was
21 provided to me.

22 Q. What is your conclusion? Can you tell me what
23 that conclusion is?

24 A. That, again, in some instances, given the data
25 that I was reviewing, there are questionable

1 instances of if there could actually have been eight
2 or more pallets.

3 Q. But you did nothing to verify that that data
4 was correct, even though you had potential access to
5 the weight, the weight and the inspection reports;
6 right?

7 A. Can you ask the question again? I'm sorry. .

8 MR. KALLISH: Can you repeat it?

9 THE WITNESS: I'm sorry.

10 (Court reporter read back pending question.)

11 A. I did not verify it with weight certificates,
12 but it would be my opinion that what was billed by
13 Central Freight would be the correct weight so that
14 they would get accurate payment. That's what they
15 put on their freight bill.

16 Q. How many times did you find shipments in the
17 over 6,000 set of data points where you believe there
18 was a misrepresentation or it was impossible that
19 there were actually eight pallets when Central
20 Freight said there were, there was eight pallets, how
21 many times?

22 A. I can't give you that number. I didn't
23 specifically zero in on that.

24 Q. More than one time?

25 A. I believe so. I would have to look at it.

1 Q. More than five times?

2 A. I would have to look at the data.

3 Q. More than ten times?

4 A. I would have to look at the data.

5 Q. So you can't tell me if it was more than ten
6 times, or if it was a hundred times, or if it was a
7 thousand times? You can't give me that information?

8 A. Not at this time.

9 Q. Yet you make the, the statement generally in
10 your report that there were instances in which
11 Central Freight billed for eight pallet shipments
12 when it was impossible that those were eight pallet
13 shipments?

14 A. I did not say that in my opinion report.

15 Q. Okay. Let's look at what you are saying here
16 then; okay? If you look here at, on page 17, one, it
17 says, In the motor carrier industry, many
18 transportation providers consider shipments to be LTL
19 when they weigh less than 20,000 pounds and are rated
20 using rates from weight breaks that are below the
21 20,000 pound weight breaks.

22 Do you see that?

23 A. Yes, sir.

24 Q. Okay. Isn't it true that, that many carriers
25 in the transportation industry also have linear foot

1 rules that would be contrary to using a 20,000 pound
2 threshold for LTL?

3 A. It doesn't make it not an LTL shipment.

4 Q. But it provides more revenue for the LTL
5 shipment; correct?

6 A. It does.

7 Q. Than simply using 20,000 pounds as a threshold?

8 A. That's correct.

9 Q. What percentage of the carriers that you use as
10 industry leader samples had tariffs that included
11 linear foot rules?

12 A. Again, I didn't specifically research that.

13 Q. Based upon your knowledge of the industry and
14 your experience in the industry, would you say
15 90 percent of them have followed linear foot tariffs?

16 A. It's pretty standard to have lineal foot or a
17 comparative capacity load application.

18 Q. Okay. So using 20,000 pounds as a threshold
19 for whether something was LTL or not LTL, it was
20 really inapplicable, considering that most carriers
21 have linear foot rules that give them more revenue
22 for volume shipments anyways; right?

23 A. Well, you have to take into consideration the
24 rules and their stipulations. As some say, it could
25 be over the amount of feet that enact the lineal foot

1 rule; however, if it's computed to a specific
2 weight, then the lineal foot charge wouldn't apply.

3 Some don't have a lineal foot charge. They
4 use capacity loads, and that usually is dependent on
5 a combination of lineal foot and weight as well.

6 Q. What is capacity load?

7 A. It is when you use the majority of a trailer.
8 It sometimes is kind of used in lieu of a lineal foot
9 rule.

10 Q. And most carriers charge more for that, right,
11 when that occurs?

12 A. They have a different rating mechanism, yes.

13 Q. So if you look at roman numeral one, the bullet
14 says, 1732 out of the 1739 sample shipments and 6273
15 of the 6298 shipments would be considered LTL, as
16 these were all less than 20,000 pounds.

17 Is that your opinion, that all of these
18 should have been rated as straight LTL shipments,
19 because they're under 20,000 pounds?

20 A. I make this note in reference to what is, what
21 is mainly used in the industry about less than 20,000
22 pounds, but, again, my opinion based on how it's
23 rated is due to the contract.

24 Q. Why is it now that you've switched back to
25 using the full sample, the two full set of 6273 --

1 I'm sorry -- of 6298, why all of the sudden are you
2 going back to that, after you've spent all of this
3 time to filter out to have a sample set?

4 A. I offered both what it would be of a sample set
5 and of the full set, because this information was
6 already provided and didn't require the rewriting of
7 these invoices.

8 Q. I mean, but there were thousands of shipments
9 that were under 150 to 50 dollars, so, of course,
10 that's not going to be a \$20,000 shipment; right?

11 A. Dollar a pound. I'm sorry.

12 Q. A lot of these shipments were -- over a
13 thousand of the shipments when you filter them out of
14 your sample set were \$150 charges or less, so,
15 obviously, they're not going to be 2,000 -- they're
16 not going to be 20,000 pound shipments; right?

17 A. That's correct.

18 Q. So I don't understand. It seems disingenuous
19 now to have a sample set that you say filters out
20 certain types of shipments that are not applicable to
21 the analysis, and then when it serves your purposes
22 you go back to the full sample set. That seems
23 awfully dishonest; don't you agree?

24 MR. BLOCK: Object to form.

25 A. I'm not being dishonest, and if you don't like

1 to use the full sample, I mean the full set, I also
2 provided the other specifics of the sample size of
3 1732 or 1739.

4 Q. It just seems to me that you used whatever
5 sample set is most convenient for your opinions, as
6 opposed to being consistent; isn't that right?

7 A. There is consistency. I gave you the number
8 for the sample set I used.

9 Q. But why when you did all of the other analysis
10 did you use the full number? Why did you use a
11 sample size?

12 A. Given the time constraints and all the work
13 that would have to be rendered, a sample size was
14 more --

15 Q. So when it's convenient to you, you use the
16 full amounts, and when it's convenient, you use a
17 sample size; is that right?

18 A. That's not --

19 MR. BLOCK: Object to the form. It's
20 getting argumentative, Marc.

21 Q. You can answer the question.

22 A. I'm sorry. Can you ask --

23 MR. KALLISH: Read it back.

24 (The court reporter read back the question.)

25 THE WITNESS: It's not necessarily

1 about convenience. In my opinion this was
2 already provided, and I provided those
3 numbers. Again, I provided both, both
4 options.

5 BY MR. KALLISH:

6 Q. Looking at number two it says, When reviewing
7 all 6,298 shipments, the average weight for each is
8 3,381.9 pounds, indicating they were more than likely
9 LTL shipments requiring less than eight pallet floor
10 spaces. What do you mean by that?

11 A. So an average weight of 3,381.9 pounds would,
12 again, most likely not require eight pallets, because
13 the standard industry pallet can hold almost by
14 itself all of this weight.

15 And given the factors of the classes that
16 are applied, which are indicative of the density,
17 these were not -- I mean, these were very dense
18 shipments.

19 They weren't feathers, where I probably
20 could get eight pallets of feathers weighing 3,398,
21 given the combination of the -- it further explains
22 here in this, if this helps, that the common freight
23 class, the average freight class would be 85, and
24 classes in the NMFC correspond with a density
25 grouping that they represent.

1 In this case 85 corresponds to a density of
2 at least 12 pounds per cubic foot, but less than 15
3 pounds per cubic foot.

4 So to be in favor of the carrier, I would
5 use the 12 pounds per cubic foot, because it would
6 render the highest amount of cubic feet.

7 Given the average class using the
8 corresponding density most in favor of the carrier,
9 and using the average weight, I can determine on
10 average it would be 281.825 cubic feet required for
11 these shipments.

12 Q. Who palletizes products in the Amazon system?

13 A. I'm uncertain of that.

14 Q. Do you think that Central Freight palletizes
15 these shipments?

16 A. I don't believe. Usually it is the shipper
17 that palletizes, unless they have dock workers from a
18 carrier that are dedicated to working on their docks
19 and palletizing their shipments.

20 Q. So if Central Freight shows up at a dock, and
21 there's eight pallets, do you think that they should
22 unpalletize them and repack them more tightly so that
23 there's less pallets; is that your opinion?

24 A. I have not in any way insinuated that opinion.

25 Q. I mean, I just don't understand your opinion,

1 because you're saying that Central Freight based upon
2 weight shouldn't have considered these eight pallets,
3 but they are physically eight pallets when they pick
4 them up.

5 There's an inspection report that indicates
6 the number of pallets, the size of the pallet, and
7 the capacity that it takes up in the truck; right?

8 A. I was not given these inspections, so I cannot
9 confirm.

10 Q. So, again, I'm just trying to understand what
11 you're trying to say. You're trying to say based
12 upon your analysis of the weight of the shipments and
13 the class of shipments that these were not palletized
14 in the manner in which Central Freight says they
15 were, that they were on less pallets; is that your
16 opinion? I'm just trying to understand the opinion.

17 A. My opinion is given known factors in the
18 industry as corresponding with the class and the
19 weights, these -- I mean, it -- the class represents
20 a specific pounds per cubic, so, therefore, the
21 density, the capacity that it would require.

22 And if that is what it is, then you can
23 determine with the factors with the cubic footage
24 would be. So at most it would require 281, round it
25 to 282 cubic feet.

1 Q. So you're saying you can do that calculation,
2 and that if there's an inspection report that shows
3 eight pallets that the inspection report is false?

4 A. I did not say that.

5 Q. Well, I don't understand what you're saying.
6 You make the statement that there are not, that
7 Central Freight stated that they were eight pallet
8 shipments, and you don't believe they were eight
9 pallet shipments. Isn't that your opinion?

10 A. I did not state that Central Freight says that
11 these were eight pallet shipments. These were
12 shipments that were rated per the volume quote
13 software.

14 Q. I'm going to show you a group exhibit. I don't
15 have additional copies of these. I'll represent to
16 you that these are a number of bills of lading and
17 weight and research inspection certificates that were
18 part of the shipments that were spot quoted.

19 I'm going to ask you to look at them. They
20 are bates numbered CFL 031993 through CFL 031502. We
21 will mark that as a group exhibit.

22 (Exhibit No. 3 was marked.)

23 BY MR. KALLISH:

24 Q. I'm showing you what I have marked as group
25 Exhibit 3. Can you take a look at those documents?

1 A. Yes, sir. (Witness reviews documents.)

2 Q. So I showed you what has been marked as group
3 Exhibit Number 3. Those are all weight and
4 inspection reports and bills of lading.

5 Would it have been helpful for you to look
6 at those similar documents for the shipments that you
7 analyzed in this case.

8 MR. BLOCK: Object to form.

9 A. No. Because, again, I believe that the, the
10 contract rates would apply, and I would ask for an
11 industry comparison of LTL rates.

12 Q. Would that have helped you in terms of your
13 statement that Central Freight submitted invoices for
14 eight pallet shipments that were not eight pallet
15 shipments? Would that information have been helpful
16 to your analysis of that issue?

17 A. Again, as I don't believe that this rule is
18 applicable, but I can, if you would like to discuss
19 some examples in here, I do have comments about them.

20 Q. That relate to the fact that you think that
21 they are not eight pallet shipments?

22 A. Physically are they eight pallets, sure.

23 Q. Okay. So I'm trying to understand. So you are
24 criticism is not that they weren't packed in eight
25 pallet shipments. Your criticism is that they could

1 have been packed in a more efficient way so they
2 wouldn't have taken up eight pallet spaces; is that
3 right?

4 A. Because I did not review all of these
5 documents, I do not know the number of pallets that
6 they were on. I did not focus in on that.

7 Q. Okay. Does your opinion assume that Central
8 Freight has some control over the number of pallets
9 that are used or how the things are packed?

10 A. No.

11 Q. So, I mean, if Central Freight goes to an
12 Amazon vendor, and they packed a shipment on eight
13 pallets, and the weight per pallet is not what you
14 think is the industry standard, what should Central
15 Freight have done in that situation?

16 A. Okay. This question is slightly confusing, in
17 the fact that we are specifically talking about eight
18 pallets. It's eight pallet space. So I could have
19 up to 16 pallets stackable.

20 Also in the -- I know in the Amended
21 Complaint that it was stated that eight pallets is
22 representative of 16 feet, which I can show you some
23 examples in these examples that you brought me where
24 I could still load eight pallets, and it would not
25 constitute 16 feet.

1 So there's some flaw in this pallet
2 argument. I am not aware of any carrier that uses
3 the number of pallet spaces used to enact a lineal
4 foot rule, as by feet.

5 Q. You would agree that some pallets you can't
6 stack things on top of them; right? Wine glasses you
7 can't stack on top of them; would you agree?

8 A. I'm not an expert in packing, but I do also
9 know, like we discussed earlier, decking bars that
10 allow for shipments that can't be directly stacked to
11 be actually two pallets tall on top of decking bars.

12 Q. Do you know if any of Central Freight's trucks
13 have decking bars?

14 A. I do not personally, no.

15 Q. Do you know if they had them during the
16 relevant time period that we're talking about?

17 A. I cannot confirm that.

18 Q. All right. Let's look at your report again.
19 So looking at page 18, number four it says, It is not
20 a common practice, seen in any of my ten years of
21 experience of freight cost auditing, that shipments
22 are bumped to a volume shipment depending on the
23 number of pallets, period.

24 There are usually two factors that would
25 constitute a bump, weights over 19,999 pounds, or

1 meeting a certain lineal footage.

2 Do you see that?

3 A. Yes, sir.

4 Q. Okay. So the two areas that would put an LTL
5 shipment into a volume shipment range is pounds or
6 linear footage; right?

7 A. Or a combination of both.

8 Q. Okay. And linear footage, what would be the
9 threshold number of a linear footage that would put
10 it into a surcharge type of situation?

11 A. It's dependent on the carrier's rules.

12 Q. Okay. And you say, It appears in the Complaint
13 that eight pallet floor spaces constitute 16 feet,
14 period. However, the most common type of pallet used
15 in the industry is actually a 40 by, 48 by 40 pallet,
16 period.

17 These could be loaded 48 wide and 40 long,
18 and therefore, two pallet wide and four pallet long
19 on each side would only be 13.33, period. This is
20 why there is usually a minimum number you of linear
21 foot that must be reached rather than a number of
22 pallets.

23 Do you believe that pallets of that size,
24 48 by 40, are, are typically shipped side by side or
25 are they pinwheeled?

1 A. I don't even know what "pinwheeled" means, but
2 as a standard practice in loading a trailer, as seen
3 in many inspection photos and inspections, they are
4 able to stack pallets 48 by 48 side by side in a
5 28-foot pup trailer.

6 Q. And that doesn't risk damaging the freight,
7 because there's no room in between the pallets?

8 A. I am not in damage claims, but, again, that is
9 how it is used in my experience over ten years.

10 Q. Based upon looking at photos of shipments and
11 inspection reports, that's your opinion?

12 A. Photos, research, inspection reports from
13 carriers.

14 Q. Okay.

15 (Exhibit No. 2 was marked.)

16 BY MR. KALLISH:

17 Q. Let me show you what we've marked as Deposition
18 Exhibit 2. What I have marked as Deposition Exhibit
19 2, that is the file that you provided us; is that
20 correct?

21 A. I believe so.

22 Q. The file that you provided consists of a copy
23 of the Complaint that was filed; is that right? A
24 number of tariffs, carrier tariffs of Central Freight
25 and other carriers; is that right.

1 A. Yes, sir.

2 Q. A copy of the Transportation Agreement?

3 A. Yes, sir.

4 Q. A document entitled "JOC.com"?

5 A. Oh, I'm sorry. Yes, sir.

6 Q. That was all that you tendered in response to
7 our request for your complete file; is that right?

8 A. Yes, sir.

9 Q. And, again, this, what you tendered to us for
10 this deposition does not include any email
11 correspondence that you received from Mr. Block's
12 office; is that right?

13 A. That's correct.

14 Q. It doesn't include the data spreadsheet that
15 was provided by Mr. Block's office that formed the
16 basis of all of your opinions; is that right?

17 A. That's correct.

18 Q. It doesn't include your rating of the
19 individual sample set industry leaders to form the
20 average; correct?

21 A. That's correct.

22 Q. What else doesn't it include that you have at
23 your office regarding this matter, or that you
24 reviewed electronically or otherwise?

25 A. Any calculation spreadsheets that I may have

1 used.

2 Q. It doesn't include your draft reports --

3 A. Yes, sir.

4 Q. -- that were edited by the CEO and COO of your
5 company?

6 A. That's correct.

7 Q. What else? Draft calculations you have? What
8 else do you have, handwritten notes?

9 A. Again, I sincerely apologize on my
10 misunderstanding of this. I thought it was anything
11 that I had paperwise, which included any handwritten
12 notes that I had, or any paper that I had available,
13 and not electronic.

14 Q. And, you know, I'm not looking for an apology.
15 I'm just trying to find out what you have, so we can
16 get it, because it's helpful.

17 A. Yes, sir.

18 Q. So if you just tell me what else you have,
19 other than what I've talked about so far?

20 A. I believe that is conclusive of what we have.

21 Q. Okay. In going back to your report, I'm
22 looking at page 19 of your report; okay? It says,
23 During the time of this investigation, all required
24 elements, data tables, program codes, stored
25 procedures, et cetera, of CFL's volume/spot quote

1 rating software were not provided in order that it
2 would be fully functional.

3 This is -- you were unable to do an
4 analysis of the spot quote before you received the
5 additional software update from Central Freight.
6 That's what this section is talking about on page 19?

7 A. That is the beginning, yes, sir.

8 Q. Okay. Are there any opinions on page 19?

9 A. Not -- well, this whole paragraph.

10 Q. Okay. So the first part of this paragraph says
11 that you couldn't do a full analysis because you
12 didn't have the right software to run the spot quote
13 program, but eventually that was provided by Central
14 Freight, and that forms the basis of your supplement
15 opinion; right?

16 A. That's correct.

17 Q. Okay. But you did do some analysis, or attempt
18 to do some analysis, to determine whether there's
19 accuracy in the spot quotes and if the spot quotes
20 were actually used; is that correct?

21 A. I made some comparisons.

22 Q. Okay. So you state here, Without the exact
23 software used to generate the billing rates, I can
24 only make informed inferences using my industry
25 knowledge and by examining the raw data provided in

1 regards to shipments that move between the same
2 origins and destination, destinations, dash,
3 specifically reviewing the date shipped, comma,
4 weight, comma, classes and billed amount, period.

5 From these inferences, comma, it is my
6 expert opinion, comma, shipment data indicates that
7 there were inconsistencies in volume, slash, spot
8 quote billing and that shipments were not billed in
9 alignment with what would be expected of an LTL
10 shipment rating, period.

11 The following -- then it goes on. The
12 following examples show comparison between shipments
13 that have the same origin zip code and the same
14 destination zip code. For these same shipments, the
15 ship date, class and weight were all compared.

16 To the best -- to best understand the
17 comparison examples, comma, there is certain industry
18 knowledge that should be understood. Please find the
19 below notes to help in the review of these shipments.

20 Okay. And then you have got one through
21 six.

22 A. I have one through seven.

23 Q. What is one through seven?

24 A. So, basically, understanding the varying
25 factors that are used to rate an LTL shipment, again,

1 as outlined origin, destination, class, weight. And
2 then, basically, as these are applied, again, just
3 noting the significance, like, for class, the lower
4 the class is, the cheaper the rate is going to be, as
5 far as the carat weight provided. Less weight
6 shipments should cost less than higher weight
7 shipments.

8 Q. Okay. You provided a bunch of examples where a
9 shipment was -- where two shipments were shipped on
10 the same day from the same origin, same destination
11 with same class rates and same weights, yet the
12 invoice charge amounts were different on those two
13 shipments; is that correct.

14 A. Not all of my shipments were exactly the same
15 in all of that information, and that's why they are
16 broken down in different examples.

17 Q. Okay. So let's look at your first example. So
18 your first example is a pickup date. It says,
19 1/11/2016 at 4:25:51 PM, and it has a zip of 90242 as
20 an origin zip and a destination zip of 92551, and a
21 package weight of 5202, and a freight class of M(70),
22 and an invoice charge amount of 255.65.

23 And then you look at the other example that
24 you have put next to that is 1/11/2016, 4/28/09 PM.
25 90242 is the origin. 92551 is the destination zip.

1 The weight is 5202. The class is M(70), and the
2 invoice charge amount is 239.28.

3 What are you trying to show by putting
4 those two shipments together?

5 A. That given these identical shipments, other
6 than the two and half minute time difference, they
7 are billed differently.

8 Q. And so the invoice charge amount is different;
9 is that what you're saying?

10 A. That is correct.

11 Q. So what are you suggesting that means?

12 A. If I have all of the same factors logically my
13 invoice charge would be the same.

14 Q. Okay. Does your analysis that you have set
15 forth in example one there, does that contemplate the
16 number of pallets?

17 A. No.

18 Q. If one of those shipments had eight pallets,
19 and the other shipment had nine pallets, would you
20 expect there to be an increased charge based upon the
21 spot quote pricing that Central Freight was using and
22 an eight pallet addendum?

23 A. As that's not applicable, that did not take
24 that into consideration.

25 Q. You say it's not applicable, and you make the

1 assumption that the rates are random and inaccurate.
2 But, obviously, Central Freight was operating under
3 the impression that they were allowed to spot quote
4 and that pallet count mattered. Wouldn't you agree?

5 MR. BLOCK: Object to form.

6 A. I don't know the pallet situation of this, so
7 I'm not comfortable discussing that.

8 Q. So you didn't consider any -- I mean, see, it
9 just seems unbelievable to me that you make the
10 assumption here that Central Freight was using random
11 spot quote numbers or numbers that were made up or
12 false when you didn't even take the time to discover
13 whether or not there was a difference between pallet
14 number, pallet numbers, which would have changed the
15 price.

16 Is that correct? Is that what you did?

17 MR. BLOCK: Object to form;
18 argumentative. You can answer that if you
19 understand it.

20 A. Okay. I will try to address that. That was a
21 really long question. I'm sorry. Can I please have
22 that re-read back to me?

23 (The court reporter read back the question.)

24 BY MR. KALLISH:

25 Q. Okay.

1 A. So, again, I am making a comparison here. As I
2 explained to the difference of these, or what it
3 means in the LTL industry, I did not -- I am not
4 accusing. I am not saying these numbers are false.

5 I am just making a comparison of these,
6 that if there are identical shipments with all of
7 this information, then it would be expected in the
8 LTL industry that these ratings would be the same.

9 Q. You know, when you say that you're not making
10 an accusation or making an assumption, if you'll look
11 at page 19 of your report, the last page says, From
12 these inferences, it is my expert opinion shipment
13 data indicates that that were inconsistencies in
14 volume, slash, spot quote billing, and that shipments
15 were not billed in alignment of what would be
16 expected of an LTL shipment rating.

17 What does that mean?

18 A. So when rating as an LTL shipment, again, with
19 all of these factors being the same, the expectation
20 would be that the invoice charge amount would be the
21 same.

22 Q. Doesn't that require that you look at all
23 factors, not just factors that you specifically
24 chose, and don't consider other factors that the
25 carrier considers material to the price?

1 A. I'm speaking as to LTL shipment rating, which
2 includes the origin, destination, zip, the weight,
3 and the class, in order to produce a rate.

4 MR. KALLISH: Let me show you what
5 we'll mark as deposition Exhibit 4.

6 (Exhibit No. 4 was marked.)

7 BY MR. KALLISH:

8 Q. First of all, the data that you provided in
9 your example one, you didn't provide the pro number,
10 or the invoice number, or any information that would
11 have allowed Central Freight to cross reference the
12 specific shipments that you were talking about; is
13 that right?

14 A. Not on purpose.

15 Q. Well, it certainly makes it more difficult for
16 Central Freight to review the information that you
17 put in your report if you don't at all designate the
18 pro number, or any identified line number, or
19 anything like that?

20 MR. BLOCK: Is that a question?

21 MR. KALLISH: Yeah, that is a
22 question. I mean, I don't understand why
23 someone would create a report like this and
24 not put in information so that their work
25 could be checked unless they're trying to

1 hide something.

2 THE WITNESS: These are very specific
3 characteristics, and you could, most
4 likely, in every instance use these
5 characteristics provided to pull out this
6 shipment data.

7 The purpose in this is that I am
8 specifically addressing these
9 characteristics in my comparison, and
10 that's why those were listed.

11 BY MR. KALLISH:

12 Q. Okay. Well, if you're looking at deposition
13 Exhibit 4, you'll see where the data that you
14 extracted is provided at the top of the first page of
15 this exhibit, and Central Freight attempted to locate
16 those same shipments using the date, the time, the
17 zip, the weight, the class, and the dollar amount,
18 and they couldn't find it in any of their data.

19 So, number one, that's just that either the
20 data was wrong, was misentered, or was somehow
21 purposefully being kept from our being able to
22 analyze it.

23 Do you have any -- do you know why they
24 couldn't find these numbers in, in their database?

25 MR. BLOCK: Object to the form;

1 argumentative?

2 A. I'm not certain.

3 Q. Okay. But since we couldn't find these exact
4 shipments, we did search for the same criteria that
5 you had. And I'll call your attention to, in the
6 first box under the data points that you put forth in
7 your example, if you look, there's a shipment on
8 12/30/2015.

9 Again, we provide the pro number, which is
10 how you can track all of these shipments, and then we
11 have the destination zip of 90242 -- I'm sorry -- the
12 origination zip of 90242, the destination zip of
13 92551. Those are the same origin and destination
14 zips of the examples that you provided; right?

15 A. That is correct.

16 Q. Okay. And then you'll see in ours the weight
17 is 5202. That's the same weight that you have in
18 your two examples, right, 5202. Do you see that?

19 A. That's correct.

20 Q. Okay. And you'll see that in our example the
21 price was 239.28, which matches the second data point
22 that you have there; right?

23 A. That's correct.

24 But it doesn't match the other data point, which is
25 255.65. Do you see that?

1 A. That is correct.

2 Q. Okay. But if you look at ours, the 239.28, the
3 \$239.28 shipment on 12-30-215 that has a weight of
4 52.02 was nine pallets. Do you see that?

5 A. I do see that.

6 Q. Okay. If you look at a similar shipment with a
7 similar weight, class, origin, and destination that
8 has an invoice amount of \$255.65, which would be
9 12-30-215, the one, two, three, four, fourth line.

10 MR. BLOCK: Did you say 12-32?

11 MR. KALLISH: 12-30-215.

12 MR. BLOCK: Oh, 12-30 of 2015?

13 MR. KALLISH: Right. If you look at
14 that on our data that's provided underneath
15 there.

16 MR. BLOCK: I understand.

17 BY MR. KALLISH:

18 Q. You go across, and you see the base rate is
19 255.65, and, again it's, the same weight, same
20 origin, same destination, but interestingly, if you
21 look at the pallets, that was ten pallets, and so the
22 more expensive invoice rate contained ten pallets,
23 where the less expensive invoice rate only contained
24 nine pallets.

25 So doesn't it appear that the reason for

1 the discrepancy for these two shipments in price
2 seems to be directly related to pallet count, which
3 you never looked at and didn't consider when you made
4 your assumption that these billing rates were random?

5 MR. BLOCK: Object to form.

6 A. Again, the consideration of these shipments in
7 my report is based on the expectations of the LTL
8 industry, and, again, it is not defined by pallets.

9 You know, I question the number of pallets
10 over here. Is it nine pallets non-stackable? Is it
11 nine pallets total that could have been stackable in
12 my trailer?

13 And, again, I did not include pallets in
14 the consideration here because my LTL rates that are
15 run through the rating systems are not, not affected
16 by pallets but by weight and class, and the class
17 which is representative of density.

18 Q. But wouldn't it make perfect sense after you
19 reviewed this data that's provided by us underneath
20 the data points that you provide that if you look at
21 when it's nine pallets, it's 239.28.

22 When it's 10 pallets, it's 255.65. Doesn't
23 that totally rebut your suggestion that the numbers
24 are random and inconsistent, rather showing that by
25 pallet they are completely consistent?

1 We have got one, two, three movements that
2 all have the same origin, destination, and weight,
3 and nine pallets, and they were all billed at the
4 same amount, versus a shipment that has the same
5 origin, destination, and weight but has ten pallets,
6 and that one is built at a slightly increased price,
7 doesn't that clearly rebut the argument that you
8 based off of your example number one?

9 MR. BLOCK: Object to form.

10 A. I don't agree. This is slightly an
11 apples-to-oranges comparison, as, again, you're
12 talking about the results of your spot quote
13 application -- excuse me -- CFL spot quote rate
14 application, which is dependent on pallets.

15 Again, this is a comparison given LTL
16 industry knowledge and what rates are. I'm making a
17 comparison that if these are rated as LTL shipments,
18 then there shouldn't be a difference here, because
19 pallets don't have an effect on these LTL shipment
20 rates.

21 It does in your spot quote. So what we are
22 both saying here can be correct. It doesn't
23 necessarily make this opinion incorrect.

24 Q. If you look on page 20 under Example 1-A and
25 then numeral one, it says, If shipments are

1 identical, then their bill charges should be
2 identical.

3 They were not. That's false. That's a
4 false statement because they have different pallet
5 sizes. And under the Central Freight spot quoting
6 system, there's going to be a different price based
7 upon the number of pallets; wouldn't you agree?

8 MR. BLOCK: Object to form;
9 argumentative.

10 A. It would need clarification that the
11 characteristics necessary to determine LTL rates are
12 identical.

13 Q. Let's look at your other example under Example
14 1. Here you've got a shipment 4-28-2016 at
15 6:32:55 p.m., with an origin of 91789, and a
16 destination zip of 92551.

17 You've got a weight of 50, 1502, you have
18 got a class of M(50), and you have got an invoice
19 charge of 312.

20 And then you have got another shipment at
21 4-28-2016 at 6:44, same origin, same zip code. The
22 weight is 1,500, so two pounds lighter. It has the
23 same freight code, freight class, and it has an
24 invoice charge amount of 383.81.

25 Isn't the reason why you included that

1 example because you are showing basically identical
2 shipments at the same time, same weight, same origin,
3 destination, and yet they have different prices?

4 Isn't that the point you're trying to make,
5 that that suggests that the spot quotes are
6 inconsistent?

7 A. It suggests that the spot quote results here
8 are not in alignment with what the rates would be for
9 an LTL shipment.

10 Q. If you then look at the data that we provided
11 on Exhibit 4 underneath your example, if you look at
12 there was another shipment at 4:28 at 2-16, on 2-16,
13 that, again, has the same origin, same destination
14 and was billed \$312, and it's weight was 6,400, and
15 it was for eight pallets; do you see that? So that's
16 consistent with what you put down as an example.

17 A. I'm sorry. I don't -- where are you
18 referencing?

19 Q. I'm looking at the second page of Exhibit 4. I
20 can give you the pro number. I can give you the
21 date, 4-28-2016. It's about a quarter of the way
22 down.

23 A. Uh-huh.

24 MR. BLOCK: Twenty minutes or so,
25 Marc.

1 MR. KALLISH: Yeah.

2 BY MR. KALLISH:

3 Q. Do you see that? It says 4-28-2016, and again,
4 same origin, destination as your example, the same
5 price, and it's eight pallets.

6 And then if you look at the other shipments
7 that were 383.81, \$383.81 that are similar to the
8 other example that you put in your second example,
9 where the weight is 1,500, that, those are \$383.81
10 because they have nine pallets.

11 So, again, the difference between the two
12 shipments that you're highlighting is because of the
13 pallet count. When there is eight pallets, the
14 amount is less than when there is nine pallets. Do
15 you see that?

16 MR. BLOCK: Object to form.

17 A. I do understand the explanation of how the
18 application of the spot volume quote takes into
19 consideration the number of pallets.

20 Q. And if you look at our second page, okay, so
21 you're going to see that starting at the top, going
22 all of the way down to almost just shy of half the
23 page, you'll find one, two, three, four, five, six,
24 seven, eight, nine, ten, eleven, twelve, thirteen,
25 fourteen, fifteen, sixteen, seventeen, eighteen,

1 nineteen, twenty, twenty shipments that are all
2 billed at \$312, that all have eight pallets, that all
3 have similar weights, same origin and destination,
4 similar timing of shipments, and they are all
5 completely consistent.

6 And then if you move down, and you go down
7 to nine pallets, you will see that the price jumps.
8 Doesn't that completely rebut your theory that there
9 were inconsistencies based upon same day, same
10 shipments, same weight, same origin, destination;
11 isn't that totally throughout your entire opinion,
12 that Central Freight was using random or false
13 shipments?

14 MR. BLOCK: Object to form.

15 A. I did not give my opinion that it was random or
16 false. What I am, again, comparing here is given the
17 factors of an LTL shipment, these would not be
18 consistent as an LTL shipment should be rated.

19 Q. Wouldn't you agree that if you factor in pallet
20 count, that Central Freight's spot quotes are very
21 specific based upon the data in front of you in
22 Exhibit 4 --

23 MR. BLOCK: Object to form.

24 Q. -- where similar shipments are all billed at
25 the same rate if they have the same pallet count?

1 MR. BLOCK: Object to form.

2 A. Because their spot quote rating application is
3 dependent on the number of pallets, it appears in
4 some of this example that I'm reviewing at the moment
5 that there is consistency.

6 Q. So your opinion is wrong in your report?

7 A. It is not a direct comparison between the two.

8 Q. Would you agree that your opinion should have
9 considered pallet count when you were looking at this
10 when you made the allegation that Central Freight's
11 spot quotes were random and unreasonable?

12 MR. BLOCK: Object to form.

13 A. I did not state that they were random or
14 unreasonable in this comparison, as it is compared to
15 what would be expected for an LTL shipment rating.

16 Q. Well, your opinion was, From these inferences,
17 it is my expert opinion shipment data indicates that
18 there were inconsistencies in volumes spot quote
19 billing and that shipments were not billed in
20 alignment with what would be expected in LTL shipment
21 rating.

22 A. Using LTL shipment rating is the key.

23 Q. Okay. But when you say if the shipments are
24 identical and their billed charges should be
25 identical, isn't that incorrect if you consider

1 pallet count, based upon the way that Central Freight
2 was using its spot quote system?

3 MR. BLOCK: Object to form.

4 A. It doesn't make it inaccurate because, again,
5 I'm basing this on the LTL shipment rating, which
6 does not involve pallets.

7 Q. Okay. In your example two you say, These
8 shipments had same origin, zip code, destination, zip
9 code, same ship date, same class but a large
10 difference in weight. The lower the weight, the less
11 costly a shipment should be. In these examples, they
12 were not.

13 So in these examples that are on page 21 of
14 your report, you are critical of the manner in which
15 Central Freight provided spot quotes for these
16 because you're saying that if there was lower weight,
17 there should be lower prices; right?

18 A. As it is in the LTL industry rating.

19 Q. But if you do it based upon the way that
20 Central Freight was working its spot quotes, you
21 would agree that if the pallet count is higher, even
22 though the weight is lower, it would be proper and
23 consistent for Central Freight to bill these
24 shipments at a higher rate because there are more
25 pallets in one shipment than the other?

1 MR. BLOCK: Object to form.

2 Q. Do you understand the question?

3 A. The logical answer, given that the mechanism
4 increases its charges by more pallets that it is
5 entered, the more pallets that are shipped, the
6 greater the cost will be.

7 Q. So, then, your statement in, on page 21 of your
8 opinion says, The lower the weight, the less costly a
9 shipment should be, if you take into account the
10 manner in which Central Freight's spot quote system
11 worked, that statement is incorrect?

12 MR. BLOCK: Object to form.

13 A. Again, this is according to, in comparison to
14 LTL ratings.

15 Q. That doesn't say that there. It doesn't say
16 it's in comparison to LTL ratings.

17 A. It's in the beginning. It's in my opinion,
18 and, therefore, these examples below are examples of
19 my opinion.

20 Q. You agree that if you take in the pallet
21 counts, all of your opinions that are associated with
22 Part B of your report are all wrong?

23 MR. BLOCK: Object to form.

24 A. Ask the question again. I'm sorry.

25 MR. KALLISH: Can you read it back?

1 (Court reporter read back pending question.)

2 MR. KALLISH: I'll ask it again.

3 BY MR. KALLISH:

4 Q. Would you agree that all of the opinions that
5 are contained in your report from page 19 to 28, that
6 if you take pallet count into account are simply
7 wrong?

8 MR. BLOCK: Object to form.

9 A. Pallet count is not applicable in LTL ratings,
10 so it does not make my opinion inaccurate.

11 Q. But doesn't Exhibit 4 rebut your statement that
12 there were inconsistencies in the manner in which
13 Central Freight billed for its same day, same origin,
14 same destination shipments?

15 MR. BLOCK: Object to form.

16 A. I'm sorry?

17 MR. KALLISH: Can you read that one
18 back?

19 (The court reporter read back the question.)

20 BY MR. KALLISH:

21 Q. So after reviewing Exhibit 4, would you agree
22 that your statement that Central Freight same day,
23 same origin, same destination, same weight shipments
24 were inconsistently billed because there was a price
25 variance between those shipments was wrong?

1 MR. BLOCK: Object to form.

2 A. It was inconsistently billed within LTL rating
3 standards.

4 Q. Okay. But when you review the data on Exhibit
5 4, wouldn't you agree that Central Freight was
6 consistently billing the same rate for same
7 destination, same origin, same weight shipments that
8 had same pallet weights, pallet counts?

9 MR. BLOCK: Object to form.

10 A. In the examples on pages one and two that I
11 have quickly reviewed, it appears so, but I have not
12 reviewed all of that data.

13 Q. Do you want to change your opinion that Central
14 Freight spot quote billing was inconsistent regarding
15 same day, same origin, same destination shipments?

16 A. In regards to as compared to LTL shipment
17 rating, that's the key piece.

18 Q. I don't understand. What do you mean that's
19 the key piece?

20 A. I'm stating in the LTL industry, given these
21 factors, which does not include pallet count, because
22 that is not, that does not affect the price in the
23 LTL rating, that the expectation would be given these
24 factors, the pricing should be similar or the same.

25 Q. But knowing that Central Freight considered

1 pallet count when they did these calculations,
2 doesn't that change your opinion?

3 MR. BLOCK: Object to form. You're
4 getting argumentative. You've asked the
5 same thing ten times, Marc.

6 MR. KALLISH: Well, she is not
7 answering truthful.

8 THE WITNESS: I'm sorry. I don't
9 appreciate that. I'm trying my best. I'm
10 afraid I'm not quite understanding your
11 question.

12 BY MR. KALLISH:

13 Q. I mean, it's a simple question. You said in
14 your report time after time, example after example,
15 that Central Freight provided random spot quotes
16 because for same destination, same origin, same
17 weight, same class shipments, they used different
18 prices, and you're saying that that was random and
19 inconsistent.

20 And Exhibit 4 shows you that it wasn't
21 random and inconsistent, because Central Freight uses
22 pallet count as a factor to determine pricing.

23 And based upon Exhibit 4, Exhibit 4 shows
24 that if you factor in pallet count that it was
25 extremely consistent. Would you agree with that?

1 MR. BLOCK: Object to form. This is
2 well into being argumentative, Marc, and
3 she -- I can't instruct her not to answer
4 but at some point I would not have a
5 problem if she said, "I have answered this
6 for the last time."

7 I would recommend that she answer this
8 and move on. You've got about eight
9 minutes left here.

10 A. I'm sorry. I will attempt to answer this.
11 From the inferences, it is my expert opinion shipment
12 data indicates that these were, that there were
13 inconsistency in volume spot quote billing, and the
14 shipments were not billed in alignment with what
15 would be expected of LTL shipment ratings, so within
16 alignment of LTL shipment ratings, the
17 characteristics.

18 Q. So the question is if you consider the way that
19 Central Freight spot quote system worked, would you
20 agree that these are consistent?

21 MR. BLOCK: Object to form. This is
22 outside the scope of her opinion. She has
23 answered this question a dozen times. She
24 hasn't fully analyzed what you're premising
25 your question on.

1 Q. Can you answer the question?

2 A. I would choose not to answer the question at
3 this time.

4 Q. So you are going to refuse to answer that
5 question? So you have no opinion regarding that?
6 You won't give an opinion in the future on that?

7 MR. BLOCK: Object to form.

8 A. I didn't say that I can't.

9 MR. BLOCK: She has answered your
10 question so many times, I don't blame her
11 for that.

12 MR. KALLISH: I don't think she has.

13 MR. BLOCK: She has.

14 MR. KALLISH: I will ask it one more
15 time.

16 BY MR. KALLISH:

17 Q. If you consider the manner in which Central
18 Freight billed spot quotes and took into account
19 pallet count, would you agree, based upon your review
20 of Exhibit 4, that they were consistent in the manner
21 in which they billed Amazon?

22 MR. BLOCK: Given the repetitious and
23 argumentative nature of this question, I
24 would recommend that Ms. Bolton decline to
25 answer that question again. I cannot

1 instruct her not to, but I will state my
2 feelings.

3 A. Considering the advice of Mr. Block, I ask that
4 we move past this question.

5 Q. Okay. So you are going to refuse to answer
6 that question?

7 A. At this time I cannot offer an opinion beyond
8 what I have already stated.

9 Q. All right. If you don't have an opinion, you
10 don't have an opinion.

11 Moving on to the supplement that you
12 created. What is the purpose of the supplement,
13 supplemental report?

14 A. We were able to get the spot quote, volume spot
15 quote rating software functional for review.

16 Q. And do you have criticisms of the manner in
17 which the spot quote system created pricing for
18 Amazon?

19 A. That's a -- I'm sorry. I'm not sure that I
20 understand the question.

21 Q. Okay. So what is the purpose of the
22 supplement? What is your opinion in the supplement
23 regarding the spot quote systems of Central Freight?

24 A. Would you like me to read the summary?

25 Q. No, I can read the summary. I'm asking for

1 your understanding of what the opinions are, if you
2 have an understanding.

3 A. So, one, there's a concern about hand entry
4 fields. Again, as we've pointed out earlier, there
5 can be human error, and with hand entry there can be
6 mistyping.

7 There is manual data entry fields that
8 represent money that do not accept dollar signs or
9 commas, which can cause mistypings there.

10 Again, a major concern is that the actual
11 price for the shipment is in a hand entry field, and
12 the only parameters are that it cannot be less than
13 the minimum floor that it determines or greater than
14 a hundred thousand dollars.

15 Q. Did you --

16 MR. BLOCK: Five minutes, Marc.

17 BY MR. KALLISH:

18 Q. Did you find any specific entries that you
19 believed were improperly entered?

20 A. CFL did not provide the historical data table
21 for that to be analyzed.

22 Q. Okay. So your answer is you didn't find any
23 specifically?

24 A. I cannot confirm either way, because I did not
25 have the data to review.

1 Q. Okay. In your analysis and the work that you
2 did in this case, you hand entered all of the data
3 that you used; didn't you?

4 A. That is correct.

5 Q. So it's possible that all of your data is
6 inaccurate as well, just like you're accusing Central
7 Freight of being inaccurate?

8 MR. BLOCK: Object to form.

9 Q. Is that right?

10 A. There is a possibility.

11 Q. Okay. Let's move on to your second opinion.
12 What's your second opinion?

13 A. There are per mile rates that are common for
14 linear foot charges or capacity load shipments,
15 which, again, can sometimes be interchanged in
16 carrier rules tariffs, but this is based on the miles
17 being traveled, again, origin to destination, those
18 type of lane things.

19 And so this system produces a static per
20 mile dependent only on a head haul or back haul lane.
21 You know, and given that they can go from California
22 to Florida, or California to California, that is not
23 consistent with what you would see in the industry.

24 Q. How many other spot quote systems have you
25 analyzed in the manner in which you provided your

1 opinions on our spot quote system, on the Central
2 Freight spot quote system?

3 A. That is proprietary information to carriers
4 that they're not subject to provide to me, so I have
5 not analyzed any.

6 Q. So this is the first time you have ever
7 analyzed the spot quote system?

8 A. That's correct.

9 Q. Have you ever built a spot quote system for the
10 purposes of rating freight?

11 A. No, sir.

12 Q. Do you have any -- have you ever taken any
13 courses or have any experience on the development of
14 spot quote systems?

15 A. No, sir.

16 Q. What's the basis of your understanding of the
17 Central Freight spot quote system? Why do you think
18 you're an expert in spot quote systems?

19 MR. BLOCK: Object to form.

20 A. It's not necessarily about this system building
21 itself. It's about the production of rates and the
22 application of charges that are produced, as I'm a
23 freight cost auditor.

24 Q. Can you describe what your methodology is that
25 you used in order to analyze the Central Freight spot

1 quote systems?

2 A. I used some sample data to start putting in the
3 key pieces to make the application work, and then as
4 this worked, code was pulled to determine what,
5 basically, the system is telling to produce in that
6 rate column.

7 Q. And is there some audit manual or some document
8 or information that tells you that that's the proper
9 way to analyze the spot quote system to determine the
10 reasonableness of rates that are being put out?

11 A. There is no such manual that exists to my
12 knowledge.

13 Q. Okay. So this is just something that you came
14 up with, in terms of how you were going to analyze
15 the spot quote system?

16 A. Correct.

17 Q. You never did it before?

18 A. That's correct.

19 Q. You never did it in the course of your job or
20 occupation with your current employer, or any other
21 employer; correct?

22 A. I analyzed the rates that were produced, which
23 is what I do in my job description.

24 Q. Okay. But you never analyzed the spot quote
25 systems?

1 A. That's correct.

2 Q. You mentioned --

3 MR. BLOCK: It's --

4 MR. KALLISH: This will be my last
5 question.

6 MR. BLOCK: Okay.

7 BY MR. KALLISH:

8 Q. You mentioned that there was certain
9 information that was missing from the spot quote
10 systems. That was historical lane usage, et cetera;
11 is that right?

12 A. There was a historical table where you could --
13 there was a tab that allowed you to look at
14 historically entered spot quotes.

15 Q. Okay. So what you were looking at is Central
16 Freight's current spot quote system; correct?

17 A. Yes, sir. They stated they could not provide a
18 previous version.

19 Q. Would you agree -- this is my last question.
20 Would you agree that after Amazon terminated Central
21 Freight, that Central Freight's lane capacity, line
22 haul, back haul would have changed dramatically,
23 considering the volume of business that Central
24 Freight was doing for Amazon?

25 MR. BLOCK: Object to form.

1 A. I cannot answer that.

2 Q. You don't know one way or another whether the
3 termination of Central Freight by Amazon affected
4 significantly it's lane, back haul, head haul, and
5 all of that that would be considered in the spot
6 quote system?

7 A. I'm not privy to that information.

8 Q. And you don't know one way or another whether,
9 how different the spot quote system is today, the one
10 that you looked at versus the one that was used to
11 calculate the pricing here?

12 A. Again, Central Freight said that they couldn't
13 provide a historical version, and, therefore, I
14 couldn't analyze it.

15 MR. KALLISH: Okay. That's all the
16 questions I have.

17 MR. BLOCK: We will reserve signature.

18 (The deposition was concluded at 4:45 p.m.)
19
20
21
22
23
24
25

Page 223

WITNESS' SIGNATURE

I, NICOLE BOLTON, hereby certify that I have thoroughly read the transcript of my deposition taken on the 22nd day of May, 2019, and that said transcript and corrections, if any, that appear on the attached errata sheet, are a true and accurate accounting of my testimony given on that day.

WITNESS

DATE

STATE OF)
) ss.
COUNTY OF)

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for the aforesaid county and state on this, the ____ day of _____, 2019.

Notary Public

My Commission Expires:

ERRATA SHEET

If there are any corrections to your deposition, indicate them on this sheet of paper, giving the change, page number, line number, and reason for the change.

The reasons for making changes are:

(1) To clarify the record;

(2) To conform to the facts; or

(3) To correct major transcription errors.

Page number ____ Line Number ____ Reason for change ____

Change _____ to _____

Page number ____ Line Number ____ Reason for change ____

Change _____ to _____

Page number ____ Line Number ____ Reason for change ____

Change _____ to _____

Page number ____ Line Number ____ Reason for change ____

Change _____ to _____

Page number ____ Line Number ____ Reason for change ____

Change _____ to _____

Page number ____ Line Number ____ Reason for change ____

Change _____ to _____

Page number ____ Line Number ____ Reason for change ____

Change _____ to _____

SIGNATURE OF DEPONENT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

STATE OF ARKANSAS)) ss.
COUNTY OF SALINE)

JANESS FERGUSON SMITH, CCR
Notary Public for Saline County,
and Court Reporter.



EXHIBIT C

FILED UNDER SEAL

Exhibit D

HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CENTRAL FREIGHT LINES, INC., a Texas)
Corporation)

Plaintiff,) NO. 2:17-CV-00814-JLR

v.)

**DECLARATION OF DOUG
CULBERTSON**

AMAZON FULFILLMENT SERVICES,)
a Delaware corporation, and DOES 1 through)
25, inclusive,)
Defendants.)

I, Doug Culbertson, declare as follows:

1. I am over the age of eighteen, have personal knowledge of the matters attested to herein and am capable of testifying to them.

2. I am the Vice President of Pricing at Central Freight Lines, Inc. In my role, I have access to and am often called upon to review and interpret Central Freight's pricing and shipment data, both historical and current.

3. I reviewed the Expert Report of Ms. Nicole Bolton dated April 29, 2019.

4. In Part B of her Report, on pages 19-28, Ms. Bolton presents a number of Examples comparing "shipments that have the same origin zip code and the same destination zip

DECLARATION OF DOUG CULBERTSON
NO. 2:18-cv-00814-JLR

ROETZEL & ANDRESS LPA
30 N. LASALLE STREET SUITE 2800
CHICAGO, IL 60602
312.580.1200

code.” (Report at p. 19.) I reviewed Ms. Bolton’s Examples and the shipments that she identifies in them.

5. I then performed an analysis of shipments Central Freight transported from the same origin zip codes to the same destination zip codes that Ms. Bolton identified. I included in this analysis the number of pallet spaces each shipment occupied, which Ms. Bolton had omitted. The results of my analysis, inserted into Ms. Bolton’s analysis, are contained in Exhibit A hereto.

6. When the number of pallets is included in the analysis, it is clear that Central Freight charged consistently across shipments going from the same origin to the same destination that had occupied the same amount of pallet spaces on a trailer.

7. In her Example 1, Ms. Bolton asserts that shipments going from the zip code 90242 to the zip code 92551 that weigh the same should be priced the same. (Report at p. 20.)

8. When I analyzed the same zip codes Ms. Bolton identified in Example 1, 90242 to 92551, but reviewed the pallet count of the shipments instead of the weight of the shipments, I determined that all shipments going from 90242 to 92551 that are 9 pallets are priced at the same rate (approximately \$230). Moreover, all shipments to and from those zip codes that occupy 12 pallet spaces are priced at the same rate as each other (approximately \$320) and at a higher rate than those shipments that occupy only 9 pallet spaces.

9. The consistency in price across shipments containing the same number of pallets remains true for each of the examples Ms. Bolton offers.

10. My analysis illustrates that Central Freight’s spot quote program was not inconsistent in rating shipments, but instead resulted in essentially identical billing for similar shipments based on the number of pallet spaces the shipments occupied.

//

//

//

1 I declare under penalty of perjury of the laws of the United States that the foregoing is
2 true and correct to the best of my knowledge, information and belief.

3 Executed on June 25 2019


4 
5
6 Doug Culbertson

Exhibit E



30 N. LaSalle St.
Suite 2800
Chicago, IL 60602
DIRECT DIAL 312.582.1604
PHONE 312.580.1200 FAX 312.637.3104
mkallish@ralaw.com

WWW.RALAW.COM

May 23, 2019

VIA EMAIL

Mr. Steven Block
Foster Pepper PLLC
1111 Third Avenue, Suite 3000
Seattle, WA 98101
Steve.block@foster.com

Re: Central Freight Lines, Inc. v. Amazon Fulfillment Services,
Case No. 17-cv-0814 (W.D. Wash.)

Dear Steve,

In response to our request for the complete file of Amazon's disclosed expert Nicole Bolton, Amazon produced only a limited number of hard copy documents. During yesterday's deposition of Ms. Bolton, it became readily apparent that Ms. Bolton considered a large volume of materials in forming her opinions, which were not produced, including electronic documents, emails and spreadsheets.

We therefore request that Amazon supplement its production within seven days to include all the materials in Ms. Bolton's complete file. This includes, but is not limited to, the following materials identified by Ms. Bolton at yesterday's deposition:

- emails and spreadsheet(s) prepared by Amazon's counsel and provided to Ms. Bolton, which formed the base data from which Ms. Bolton conducted various analyses;
- various working spreadsheets which were the basis for analyses conducted by Ms. Bolton relating to purported industry average shipments;
- working papers and spreadsheets that provided support for certain of Ms. Bolton's analyses;
- multiple copies of her draft report containing edits made by her employer's CEO and COO;
- emails produced in this lawsuit that were provided to Ms. Bolton and which she reviewed;
- research materials and work papers relating to CFL's expert Michael Regan's Truckstop.com calculations; and

Steve.block@foster.com

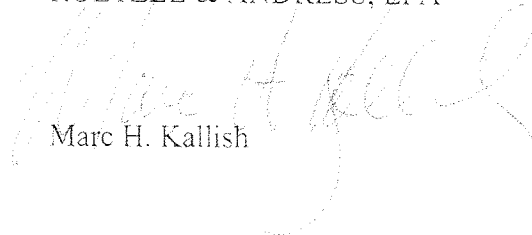
Page 2

- emails sent to Ms. Bolton by Amazon's counsel containing information considered by Ms. Bolton in forming her opinions.

The above list is not exhaustive, and we expect that Amazon will supplement its production to include, as it is required to under the Federal Rules, all materials considered by Ms. Bolton in forming her opinions. Please confirm that these materials will be produced within the next seven days. Thank you.

Very truly yours,

ROETZEL & ANDRESS, LPA



Marc H. Kallish

cc: Christopher Rogers, Esq.

FOSTER PEPPER LLP

Direct Phone (206) 447-7273
Direct Facsimile (206) 749-2109
steve.block@foster.com

June 3, 2019

Via E-Mail and U.S. Mail

Marc H. Kallish
Julia L. Mohan
Roetzel & Andress, LPA
20 South Clark St. Ste., 300
Chicago, IL 60603

Re: *Central Freight Lines, Inc. v. Amazon Fulfillment Services*
W.D. Wash. Case No. 17-cv-0814

Dear Marc and Julia:

This letter responds to yours dated May 23, 2019 requesting certain materials from the files of Amazon's FRE 702 expert Niki Bolton. Most of what you request either is not discoverable under FRCP 26(2)(B) or does not exist. That rule enables you to obtain only the following expert witness file materials:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the facts or data considered by the witness in forming them;
- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

You have received Ms. Bolton's complete opinions and bases for them per (i). Most of the facts and data required by (ii) are stated in her two reports. Virtually all exhibits per Ms. Bolton might refer to in her trial testimony (iii) has been produced in discovery and is apparent from her reports and deposition. Ms. Bolton's report and deposition revealed her qualifications and compensation per (iv) and (vi), but attached are a few documents that further demonstrate her qualifications. Lastly, Ms. Bolton explained to you she has never before testified as an expert witness per (v).

Marc H. Kallish
Julia L. Mohan
June 3, 2019
Page 2

During her deposition, you expressed particular interest in the spreadsheet of shipment and pricing data Ms. Bolton relied on. These were produced to you earlier at Bate Stamp page nos. AFS_CFL_00106512 through 00106512.

Ms. Bolton did communicate with third-party sources to obtain data addressing the I/TL pricing market at times material. Copies of her communications also are attached.

We believe all other facts and data Ms. Bolton relied on were produced to you in discovery. Because her files are extensive, she will require several days to review them to be certain. If she finds any other emails or other materials that contain data or facts she relied on, we will produce them to you promptly.

Very truly yours,

A handwritten signature in dark ink, appearing to read "S. Block", written over the closing "Very truly yours,".

Steven W. Block

Attachments



30 N. LaSalle St.
Suite 2800
Chicago, IL 60602
DIRECT DIAL: 312.582.1604
PHONE 312.580.1200 FAX 312.637.3104
mkallish@ralaw.com

WWW.RALAW.COM

June 12, 2019

VIA EMAIL

Mr. Steven Block
Foster Pepper PLLC
1111 Third Avenue, Suite 3000
Seattle, WA 98101
Steve.block@foster.com

Re: Central Freight Lines, Inc. v. Amazon Fulfillment Services
Case No. 17-cv-0814 (W.D. Wash.)

Dear Steve,

I am writing regarding your letter dated June 3, 2019, in which you responded to my May 23, 2019 letter by producing certain supplemental materials from the files of Amazon's FRE 702 expert Niki Bolton. Thank you for the supplemental production, but it is still incomplete.

As Ms. Bolton testified at her deposition, her opinion regarding the reasonableness of CFL's Volume Rate is based on calculations she performed on a sample size of 1739 shipments. (Bolton Dep., 134:2-19.) For each of these 1739 line items, Ms. Bolton went through a series of calculations, including comparing the CzarLite 2011 cwt rate to a number of individual carriers' cwt rate and applying a percent increase to the carriers' cwt rate. (*Id.*, 142:17145:24; *see also* Bolton Report, pp. 11-13.) The spreadsheets detailing these calculations should have been produced as part of Ms. Bolton's mandatory disclosures, but to date have not been produced.

Federal Rule of Civil Procedure 26(a)(2)(B)(ii) requires the production of "the facts or data considered by the [expert] witness in forming" her opinions. Courts have read the term "considered" to include information that an expert "reviews *or generates*." *Apple Inc. v. Amazon.com, Inc.*, No. 11-1327, 2013 WL 1320760, at *1 (N.D. Cal. Apr. 1, 2013) (emphasis added). It is unquestionable that Ms. Bolton "considered" these calculations in forming her opinions – in fact, they formed the basis for opinions one and two of her report.

We therefore request that you produce the spreadsheets detailing this data within five (5) business days. Should you refuse to do so, we will assume that Ms. Bolton will not be relying on the information on the spreadsheets and therefore her opinions in sections one and two of her report will be considered moot. We will also seek to bar Ms. Bolton's opinions, to the extent they are based on this data, pursuant to Fed. R. Civ. P. 37(c). In relevant part, Fed. R. Civ. P.

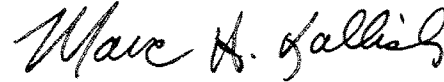
Steven Block
Page 2

37(c)(1) states that if a party fails to provide information required by Rule 26(a), “the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” *See also Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001) (“Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed.”). Here, there is no justification for Ms. Bolton’s failure to produce these materials. Ms. Bolton’s report contains only her conclusions, but not the underlying data or calculations that she admittedly has in his possession. Without this information, neither my client nor the Court will be able to assess the basis and reasons for her opinions.

Please confirm that this data will be produced within the next five days. Thank you.

Very truly yours,

ROETZEL & ANDRESS, LPA



Marc H. Kallish

MHK

Marc H. Kallish

cc: Christopher Rodgers (christopher.rodgers@foster.com)

Wills, Garry

From: Wills, Garry
Sent: Thursday, June 20, 2019 3:37 PM
To: steve.block@foster.com; christopher.rogers@foster.com
Cc: MKallish@ralaw.com; JMohan@ralaw.com
Subject: CFL v. Amazon

Large File Send Sent Files

Powered by **mimecast**

You shared files with
steve.block@foster.com christopher.rogers@foster.com MKallish@ralaw.com JMohan@ralaw.com.

File(s):

PRODUCTION PDFS.zip

Steve,

Attached is a link to CFL's supplemental production of financial statements and tax returns, all of which are designated as highly confidential – attorneys' eyes only. Please let us know when you will be producing the spreadsheet(s) showing Ms. Bolton's underlying calculations. Thank you.

Garry

Garry L. Wills, Counsel



ROETZEL
30 N. LaSalle St.
Suite 2800
Chicago, IL 60602
Direct Phone No.: 312.582.1687
Telephone: 312.580.1200
Facsimile: 312.580.1201
Email: GWills@ralaw.com
www.ralaw.com

Both Garry L. Wills and Roetzel & Andress intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Garry L. Wills immediately at (312) 582-1687. Thank you.